AND
RIEFS

No. 15-1509

FILED
JUN 12 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION, TRUSTEE, ET AL. BY AND THROUGH, CWCAPITAL ASSET MANAGEMENT LLC, SOLELY IN ITS CAPACITY AS SPECIAL SERVICER,

Petitioner,

v.

THE VILLAGE AT LAKERIDGE, LLC,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED JUNE 13, 2016
CERTIORARI GRANTED MARCH 27, 2017

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COUNSEL PRESS

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The following opinions and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for a writ of certiorari:

Appendix A: Ninth Circuit Court of Appeals Opinion (Feb. 8, 2016)
Appendix B: Ninth Circuit Bankruptcy Appellate Panel Memorandum (Apr. 5, 2013)
Appendix C: Bankruptcy Court Order (Aug. 20, 2012)
Appendix D: Ninth Circuit Court of Appeals Order (Mar. 16, 2016)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT,

NO. 2013-60038

IN RE: THE VILLAGE AT LAKERIDGE, LLC,
FKA MAGNOLIA VILLAGE, LLC,

Debtor,

U.S. BANK, TRUSTEE, *et al.*, BY AND THROUGH
CWCAPITAL ASSET MANAGEMENT LLC,
SOLELY IN ITS CAPACITY AS SPECIAL
SERVICER,

APPELLANT,

V.

THE VILLAGE AT LAKERIDGE, LLC,

Appellee,

ROBERT ALAN RABKIN,

Real Party in Interest.

Date Filed	#	Docket Text
04/26/2013	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes.

Setting schedule as follows: Mediation Questionnaire due on 05/03/2013. Appellant U.S. Bank National Association opening brief due 07/29/2013. Appellee The Village at Lakeridge, LLC answering brief due 08/27/2013 Appellant's optional reply brief is due 14 days after service of the answering brief. [8606283] (FB) [Entered: 04/26/2013 10:58 AM]

* * *

05/07/2013	4	Received Appellant U.S. Bank National Association notice - statement of issues on appeal and designation of record on appeal. [8620029] (CW) [Entered: 05/07/2013 02:37 PM]

* * *

01/24/2014	13	Submitted (ECF) Opening Brief and excerpts of record for review. Submitted by Appellant U.S. Bank National Association. Date of service: 01/24/2014. [8952238] (Owens, Keith) [Entered: 01/24/2014 10:09 PM]

* * *

02/03/2014	15	Filed clerk order (Deputy Clerk: AMT): Appellant's unopposed motion

to consolidate Nos. 13-60038 and 13-60039 is granted. The consolidated opening brief already received is ordered filed. The consolidated answering brief is due March 7, 2014. The consolidated optional reply brief is due within 14 days after service of the consolidated answering brief. [8962676] [13-60038, 13-60039] (HC) [Entered: 02/03/2014 10:38 AM]

02/03/2014	16	Filed amended clerk order: This order amends the order [14] filed on January 27, 2014 in No. 13-60038. The opening brief [13], [8952239-2] submitted by U.S. Bank National Association in 13-60038, 13-60039 is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the excerpts of record [13], [8952239-2] submitted by U.S. Bank National Association

		in 13-60038, 13-60039. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [8964053] [13-60038, 13-60039] (LA) [Entered: 02/03/2014 04:48 PM]
		* * *
02/03/2014	18	Filed Appellant U.S. Bank National Association paper copies of excerpts of record [13], [8952239-2] in 4 volume(s). [8966898] [13-60038, 13-60039] (LA) [Entered: 02/05/2014 11:51 AM]
03/07/2014	19	Submitted (ECF) Answering Brief and supplemental excerpts of record for review. Submitted by - The Village at Lakeridge, LLC in 13-60038, 13-60039. Date of service: 03/07/2014. [9007965] [13-60038, 13-60039]--[COURT UPDATE: Attached corrected brief. Resent NDA. 03/10/2014 by RY]--[Edited: Edited docket text to reflect correct brief type. 03/10/2014 by RY] (Smith, Alan) [Entered: 03/07/2014 05:47 PM]

03/10/2014	20	Filed clerk order: The answering brief [19] submitted by The Village at Lakeridge, LLC is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the supplemental excerpts of record [19] submitted by The Village at Lakeridge, LLC. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [9009963] [13-60038, 13-60039] (CT) [Entered: 03/10/2014 05:15 PM]

* * *

03/17/2014	24	Filed Appellee The Village at Lakeridge, LLC paper copies of supplemental excerpts of record [19] in 1 volume. [9022992] [13-60038,

		13-60039] (CT) [Entered: 03/19/2014 03:34 PM]
04/21/2014	25	Submitted (ECF) Reply Brief for review. Submitted by Appellant U.S. Bank N.A. in 13-60038. Date of service: 04/21/2014. [9066610] [13-60038, 13-60039] (Owens, Keith) [Entered: 04/21/2014 05:56 PM]
04/22/2014	26	Filed clerk order: The reply brief [25] submitted by U.S. Bank N.A. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [9067241] [13-60038, 13-60039] (CT) [Entered: 04/22/2014 10:11 AM]

* * *

10/22/2015	45	ARGUED AND SUBMITTED TO RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S.

LASNIK. [9728804] [13-60038, 13-60039] (CB) [Entered: 10/22/2015 01:32 PM]

* * *

02/08/2016	47	FILED OPINION (RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK) AFFIRMED. Judge: RRC Concurring & dissenting, Judge: NRS Authoring. FILED AND ENTERED JUDGMENT. [9857341] [13-60038, 13-60039] (RMM) [Entered: 02/08/2016 07:02 AM]
02/08/2016	48	Filed memorandum (RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK) AFFIRMED. [9857344] [13-60038, 13-60039] (RMM) [Entered: 02/08/2016 07:03 AM]
02/22/2016	49	Filed (ECF) Appellant U.S. Bank N.A. in 13-60038, 13-60039 petition for rehearing en banc (from 02/08/2016 opinion). Date of service: 02/22/2016. [9873712] [13-60038, 13-60039] (Owens, Keith) [Entered: 02/22/2016 04:32 PM]

03/16/5016	50	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK) Judge N.R. Smith has voted to deny the petition for rehearing en banc, and Judge Lasnik has so recommended. Judge Clifton has voted to grant the petition for rehearing en banc. The full court was advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. [9903452] [13-60038, 13-60039] (WL) [Entered: 03/16/2016 09:46 AM]
03/22/2016	51	Filed (ECF) Appellant U.S. Bank N.A. in 13-60038, 13-60039 Motion to stay the mandate. Date of service: 03/22/2016. [9911797] [13-60038, 13-60039] (Owens, Keith) [Entered: 03/22/2016 06:11 PM]
04/06/2016	52	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK) It is ordered that the mandate is stayed for 90 days so that Petitioner may file a petition for writ of certiorari in the Supreme Court. If such a petition is filed and the party who obtained the stay so notifies the clerk of this court in writing within the period

		of the stay, the stay shall continue until final disposition by the Supreme Court. See Federal Rule of Appellate Procedure 41(d)(2). [9929032] [13-60038, 13-60039] (WL) [Entered: 04/06/2016 09:20 AM]
06/16/2016	53	Received notice from the Supreme Court: petition for certiorari filed on 06/13/2016. Supreme Court Number 15-1509. [10018567] [13-60038, 13-60039] (RR) [Entered: 06/16/2016 06:32 PM]
03/28/2017	54	Received notice from the Supreme Court. Petition for certiorari GRANTED on 03/27/2017. Supreme Court Number 15-1509. The Court today entered the following order in the above-entitled case: The petition for a writ of certiorari is granted limited to Question 2 presented by the petition. [10373957] [13-60038, 13-60039] (RL) [Entered: 03/28/2017 10:07 AM]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT,

NO. 2013-60039

IN RE: THE VILLAGE AT LAKERIDGE, LLC,
FKA MAGNOLIA VILLAGE, LLC,

Debtor,

U.S. BANK, TRUSTEE, *et al.*, BY AND THROUGH
CWCAPITAL ASSET MANAGEMENT LLC,
SOLELY IN ITS CAPACITY AS SPECIAL
SERVICER,

Appellant,

V.

THE VILLAGE AT LAKERIDGE, LLC,

Appellee,

ROBERT ALAN RABKIN,

Real Party in Interest.

Date Filed	#	Docket Text
04/26/2013	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes.

Setting schedule as follows: Fee due from Appellant U.S. Bank National Association on 05/10/2013. Mediation Questionnaire due on 05/03/2013. Appellant U.S. Bank National Association opening brief due 07/29/2013. Appellee The Village at Lakeridge, LLC answering brief due 08/27/2013 Appellant's optional reply brief is due 14 days after service of the answering brief. [8606316] (FB) [Entered: 04/26/2013 11:15 AM]

* * *

05/07/2013	4	Received Appellant U.S. Bank National Association notice - statement of issues on appeal and designation of record on appeal . [8620029] (CW) [Entered: 05/07/2013 02:37 PM]

* * *

01/24/2014	15	Submitted (ECF) Opening Brief and excerpts of record for review. Submitted by Appellant U.S. Bank National Association. Date of service: 01/24/2014. [8952239] (Owens, Keith) [Entered: 01/24/2014 10:13 PM]
01/28/2014	16	Filed (ECF) Appellant U.S. Bank National Association Motion to consolidate cases 13-60039 and 13-

60038. Date of service: 01/28/2014. [8956653]--[COURT UPDATE: Attached corrected motion (includes declaration). Resent NDA. 01/28/2014 by RY] (Owens, Keith) [Entered: 01/28/2014 04:40 PM]

02/03/2014 17 Filed clerk order (Deputy Clerk: AMT): Appellant's unopposed motion to consolidate Nos. 13-60038 and 13-60039 is granted. The consolidated opening brief already received is ordered filed. The consolidated answering brief is due March 7, 2014. The consolidated optional reply brief is due within 14 days after service of the consolidated answering brief. [8962676] [13-60038, 13-60039] (HC) [Entered: 02/03/2014 10:38 AM]

02/03/2014 18 Filed amended clerk order: This order amends the order [8953750-2] filed on January 27, 2014 in No. 13-60038. The opening brief [8952238-2], [15] submitted by U.S. Bank National Association in 13-60038, 13-60039 is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief

is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the excerpts of record [8952238-2], [15] submitted by U.S. Bank National Association in 13-60038, 13-60039. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [8964053] [13-60038, 13-60039] (LA) [Entered: 02/03/2014 04:48 PM]

* * *

02/03/2014	20	Filed Appellant U.S. Bank National Association paper copies of excerpts of record [8952238-2], [15] in 4 volume(s). [8966898] [13-60038, 13-60039] (LA) [Entered: 02/05/2014 11:51 AM]
03/07/2014	21	Submitted (ECF) Answering Brief and supplemental excerpts of record for review. Submitted by - The Village at Lakeridge, LLC in 13-60038, 13-60039. Date of service:

		03/07/2014. [9007965] [13-60038, 13-60039]--[COURT UPDATE: Attached corrected brief. Resent NDA. 03/10/2014 by RY]--[Edited: Edited docket text to reflect correct brief type. 03/10/2014 by RY] (Smith, Alan) [Entered: 03/07/2014 05:47 PM]
03/10/2014	22	Filed clerk order: The answering brief [21] submitted by The Village at Lakeridge, LLC is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the supplemental excerpts of record [21] submitted by The Village at Lakeridge, LLC. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [9009963] [13-60038, 13-60039] (CT) [Entered: 03/10/2014 05:15 PM]

* * *

03/17/2014	26	Filed Appellee The Village at Lakeridge, LLC paper copies of supplemental excerpts of record [21] in 1 volume. [9022992] [13-60038, 13-60039] (CT) [Entered: 03/19/2014 03:34 PM]
04/21/2014	27	Submitted (ECF) Reply Brief for review. Submitted by Appellant U.S. Bank N.A. in 13-60038. Date of service: 04/21/2014. [9066610] [13-60038, 13-60039] (Owens, Keith) [Entered: 04/21/2014 05:56 PM]
04/22/2014	28	Filed clerk order: The reply brief [27] submitted by U.S. Bank N.A. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [9067241] [13-60038, 13-60039] (CT) [Entered: 04/22/2014 10:11 AM]

* * *

10/22/2015	47	ARGUED AND SUBMITTED TO RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK. [9728804] [13-60038, 13-60039] (CB) [Entered: 10/22/2015 01:32 PM]

* * *

02/08/2016	49	FILED OPINION (RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK) AFFIRMED. Judge: RRC Concurring & dissenting, Judge: NRS Authoring. FILED AND ENTERED JUDGMENT. [9857341] [13-60038, 13-60039] (RMM) [Entered: 02/08/2016 07:02 AM]
02/08/2016	50	Filed memorandum (RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK) AFFIRMED. [9857344] [13-60038, 13-60039] (RMM) [Entered: 02/08/2016 07:03 AM]
02/22/2016	51	Filed (ECF) Appellant U.S. Bank N.A. in 13-60038, 13-60039 petition for rehearing en banc (from 02/08/2016 opinion). Date of service:

		02/22/2016. [9873712] [13-60038, 13-60039] (Owens, Keith) [Entered: 02/22/2016 04:32 PM]
03/16/2016	52	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK) Judge N.R. Smith has voted to deny the petition for rehearing en banc, and Judge Lasnik has so recommended. Judge Clifton has voted to grant the petition for rehearing en banc. The full court was advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. [9903452] [13-60038, 13-60039] (WL) [Entered: 03/16/2016 09:46 AM]
03/22/20416	53	Filed (ECF) Appellant U.S. Bank N.A. in 13-60038, 13-60039 Motion to stay the mandate. Date of service: 03/22/2016. [9911797] [13-60038, 13-60039] (Owens, Keith) [Entered: 03/22/2016 06:11 PM]
04/06/2016	54	Filed order (RICHARD R. CLIFTON, N. RANDY SMITH and ROBERT S. LASNIK) It is ordered that the mandate is stayed for 90

days so that Petitioner may file a petition for writ of certiorari in the Supreme Court. If such a petition is filed and the party who obtained the stay so notifies the clerk of this court in writing within the period of the stay, the stay shall continue until final disposition by the Supreme Court. See Federal Rule of Appellate Procedure 41(d)(2). [9929032] [13-60038, 13-60039] (WL) [Entered: 04/06/2016 09:20 AM]

06/16/2016 55 Received notice from the Supreme Court: petition for certiorari filed on 06/13/2016. Supreme Court Number 15-1509. [10018567] [13-60038, 13-60039] (RR) [Entered: 06/16/2016 06:32 PM]

03/28/2017 56 Received notice from the Supreme Court. Petition for certiorari GRANTED on 03/27/2017. Supreme Court Number 15-1509. The Court today entered the following order in the above-entitled case: The petition for a writ of certiorari is granted limited to Question 2 presented by the petition. [10373957] [13-60038, 13-60039] (RL) [Entered: 03/28/2017 10:07 AM]

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE NINTH CIRCUIT,

NO. 2012-1456

IN RE: THE VILLAGE AT LAKERIDGE, LLC, FKA MAGNOLIA VILLAGE, LLC,

Debtor.

THE VILLAGE AT LAKERIDGE, LLC,

Appellant,

V.

U.S. BANK NATIONAL ASSOCIATION; ROBERT RABKIN, MD; UST-UNITED STATES TRUSTEE, RENO,

Appellees.

Date Filed	#	Docket Text
09/05/2012	1	Received NOTICE OF APPEAL filed in Bankruptcy Court on 08/31/2012, NOTICE OF REFERRAL, BK.CT. MEMORANDUM (RE: Notice of Appeal); TRANSMITTAL FORM &

		COPY 08/20/2012 BK.CT. ORDER GRANTING U.S. BANK'S MOTION TO (A) DESIGNATE CLAIM OF ROBERT RABKIN AS INSIDER CLAIM & (B) DISALLOW SUCH CLAIM FOR VOTING PURPOSES. (VB) [Entered: 09/05/2012 01:12 PM]
		* * *
11/05/2012	20	Filed (ECF) Attorney Alan R. Smith, Esquire for Appellant The Village at Lakeridge, LLC's brief on appeal; served on 11/05/2012 email - Attorney for Appellant: Smith; Attorney for Appellees: Bubala, Chubb, Cossitt, Hartman, Nassiri, Owens, Rafatjoo, Strozza, Whitwell. (ARS) [Entered: 11/05/2012 03:17 PM]
11/07/2012	21	Received by Attorney Alan R. Smith for The Village at Lakeridge, LLC in NV-12-1456 & NV-12-1474 (original and 4 copies) - APPELLANT / CROSS-APPELLEE EXCERPTS OF RECORD IN 1 VOLUME, filed on 11/07/2012. Served on 11/05/2012. Appellee / Cross-Appellant Robert Rabkin, U.S. Bank National Association and ust- United States Trustee, Reno's opening brief due

11/26/2012. (NOTE: In reference to this document, the PDF in BAP Pacer System contains only the face sheet, table of contents & certificate of service.) [12-1456, 12-1474] (VB) [Entered: 11/08/2012 10:01 AM]

* * *

11/26/2012	23	Filed (ECF) Attorney Mr. Keith Charles Owens, Esquire for Appellant U.S. Bank National Association in 12-1474's second brief on cross-appeal; served on 11/26/2012 email - Attorney for Appellants: Bubala, Owens, Rafatjoo, Smith; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 11/26/2012 02:26 PM]

* * *

11/27/2012	25	Received from Attorney Keith Charles Owens for Appellee / Cross-Appellant U.S. Bank National Association (original and 4 copies): APPELLEE / CROSS-APPELLANT'S EXCERPTS OF RECORD IN 2 VOLUMES, filed on 11/27/2012. Served on 11/26/2012. Appellant / Cross-Appellee The

Village at Lakeridge, LLC's reply brief (3rd Brief) due 12/10/2012. (NOTE: Pertaining to this document, PDF in BAP Pacer System contains only the face sheets, table of contents & certificate of service.) [12-1456, 12-1474] (VB) [Entered: 11/27/2012 03:29 PM]

* * *

12/17/2012 31 Filed (ECF) Attorney Alan R. Smith, Esquire for Appellant The Village at Lakeridge, LLC in 12-1456's reply brief on appeal; served on 12/17/2012 email - Attorney for Appellants: Bubala, Chubb, Nassiri, Owens, Rafatjoo, Smith, Whitwell; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (ARS) [Entered: 12/17/2012 03:22 PM]

* * *

01/03/2013 35 Received and filed from Attorney Holly E. Estes for Appellant / Cross-Appellee The Village at Lakeridge, LLC (original and 4 copies) - APPELLANT / CROSS-APPELLEE AMENDED SUPPLEMENTAL APPENDIX. Served on 01/02/2013. [12-1456, 12-

		1474] (VB) [Entered: 01/03/2013 12:45 PM]
01/10/2013	36	Filed (ECF) Attorney Mr. Keith Charles Owens, Esquire for Appellee U.S. Bank National Association in 12-1456's fourth brief on cross-appeal; served on 01/10/2013 email - Attorney for Appellants: Bubala, Owens, Rafatjoo, Smith; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 01/10/2013 06:24 PM]
		* * *
03/22/2013	40	ARGUED AND SUBMITTED TO Pappas, Kirscher and Taylor. [12-1456, 12-1474] (EC) [Entered: 03/22/2013 02:04 PM]
		* * *
04/05/2013	42	CLOSED: Case closed: Affirmed in Part, Reverse in part, Vacate in Part & Remand; Terminated on the merits after oral hearing; Written, Unsigned, Unpublished; Pappas, Kirscher and Taylor; 04/05/2013; NV-12-1456; Memorandum. [Edited 04/05/2013 by VB] (VB) [Entered: 04/05/2013 01:51 PM]

04/05/2013	43	FILED AND ENTERED JUDGMENT. [EOD] Date: 04/05/2013. Mandate to issue: 04/26/2013. (VB) [Entered: 04/05/2013 02:18 PM]
04/05/2013	44	LETTER AND DISPOSITION sent to Bankruptcy Court Judge Bruce T. Beesley. [12-1456, 12-1474] (VB) [Entered: 04/05/2013 02:54 PM]
04/05/2013	45	DISPOSITION AND NOTICE OF ENTRY OF JUDGMENT sent to parties and Bankruptcy Clerk. [12-1456, 12-1474] (VB) [Entered: 04/05/2013 03:03 PM]
04/19/2013	46	Notice of Appeal to the 9th Circuit (ECF) filed by Attorney Mr. Keith Charles Owens, Esquire for Appellee U.S. Bank National Association in 12-1456; Fee status: Not Paid; Receipt No.: ; served on 04/19/2013 served by: email - Attorney for Appellants: Estes, Smith; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 04/19/2013 01:44 PM]
04/23/2013	47	Filed (ECF) Attorney Mr. Keith Charles Owens, Esquire for Appellee U.S. Bank National Association in

		12-1456, Attorney Mr. Keith Charles Owens, Esquire for Appellant U.S. Bank National Association in 12-1474's stipulation to stay further action pending appeal; 04/23/2013 served by: email - Attorney for Appellants: Estes, Owens, Smith, Whitwell; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 04/23/2013 01:58 PM]
04/25/2013	48	Filed ORDER (PAPPAS, KIRSCHER and TAYLOR); Stay pending the appeals to the Court of Appeals to maintain the status quo in the underlying chapter 11 case is ordered GRANTED. (See order for details.) [12-1456, 12-1474] (VB) [Entered: 04/25/2013 10:35 AM]
		* * *
04/25/2013	50	NOTICE OF FILING OF APPEAL TO 9TH CIRCUIT sent to Reno, NV Bankruptcy Court. [12-1456, 12-1474] (VB) [Entered: 04/25/2013 12:34 PM]
04/26/2013	51	MANDATE ISSUED to Bankruptcy Court Reno, NV (NVR). (VB) [Entered: 04/26/2013 11:34 AM]

04/26/2013	52	Received 9TH CIRCUIT COURT OF APPEALS CASE NUMBER: 13-60038. (VB) [Entered: 04/26/2013 01:12 PM]
05/03/2013	53	Designation of Record and/or Statement of Issues (ECF) filed for Court of Appeals by Attorney Mr. Keith Charles Owens, Esquire for Appellee U.S. Bank National Association in 12-1456; served on 05/03/2013 served by: email - Attorney for Appellants: Owens, Rafatjoo, Smith; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 05/03/2013 02:07 PM]

* * *

05/17/2013	55	Designation of Record and/or Statement of Issues (ECF) filed for Court of Appeals by Attorney Holly E. Estes, Esquire for Appellant The Village at Lakeridge, LLC in 12-1456; served on 05/17/2013 served by: email - Attorney for Appellants: Bubala, Owens, Rafatjoo; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (ARS) [Entered: 05/17/2013 04:10 PM]

09/09/2015	56	Record sent to Ninth Circuit on 09/09/2015; orig. [12-1456, 12-1474] (PI) [Entered: 09/09/2015 04:53 PM]
03/28/2017	57	Received from 9th Circuit U.S. Court of Appeals - COPY NOTICE, dated 03/27/2017, RE: Petition for a Writ of Certiorari Granted by the Supreme Court (RE: CA#: 13-60038 / BAP#: NV-12-1456 & CA#: 13-60039 / BAP#: NV-12-1474). (See notice for details.) [12-1456, 12-1474] (VB) [Entered: 03/28/2017 02:08 PM]

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE NINTH CIRCUIT,

NO. 2012-1474

IN RE: THE VILLAGE AT LAKERIDGE, LLC, FKA MAGNOLIA VILLAGE, LLC,

Debtor.

U.S. BANK NATIONAL ASSOCIATION,

Appellant,

V.

THE VILLAGE AT LAKERIDGE, LLC,

Appellee.

Date Filed	#	Docket Text
09/18/2012	1	Received NOTICE OF CROSS-APPEAL filed in Bankruptcy Court on 09/14/2012, NOTICE OF REFERRAL, BK.CT. MEMORANDUM (RE: Notice of Cross-Appeal), TRANSMITTAL FORM & COPY 08/20/2012 BK.CT. ORDER GRANTING U.S. BANK'S MOTION TO (A) DESIGNATE CLAIM OF ROBERT RABKIN AS INSIDER

CLAIM & (B) DISALLOW SUCH CLAIM FOR VOTING PURPOSES. (VB) [Entered: 09/19/2012 09:42 AM]

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11/07/2012	14	Received by Attorney Alan R. Smith for The Village at Lakeridge, LLC in NV-12-1456 & NV-12-1474 (original and 4 copies) - APPELLANT / CROSS-APPELLEE EXCERPTS OF RECORD IN 1 VOLUME, filed on 11/07/2012. Served on 11/05/2012. Appellee / Cross-Appellant Robert Rabkin, U.S. Bank National Association and ust- United States Trustee, Reno's opening brief due 11/26/2012. (NOTE: In reference to this document, the PDF in BAP Pacer System contains only the face sheet, table of contents & certificate of service.) [12-1456, 12-1474] (VB) [Entered: 11/08/2012 10:01 AM]
11/26/2012	15	Filed (ECF) Attorney Mr. Keith Charles Owens, Esquire for Appellant U.S. Bank National Association in 12-1474's second brief on cross-appeal; served on 11/26/2012 email - Attorney for Appellants: Bubala, Owens, Rafatjoo, Smith; Attorney for Appellees: Cossitt,

Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 11/26/2012 02:26 PM]

* * *

11/26/2012 17 Received from Attorney Keith Charles Owens for Appellee / Cross-Appellant U.S. Bank National Association (original and 4 copies): APPELLEE / CROSS-APPELLANT'S EXCERPTS OF RECORD IN 2 VOLUMES, filed on 11/27/2012. Served on 11/26/2012. Appellant / Cross-Appellee The Village at Lakeridge, LLC's reply brief (3rd Brief) due 12/10/2012. (NOTE: Pertaining to this document, PDF in BAP Pacer System contains only the face sheets, table of contents & certificate of service.) [12-1456, 12-1474] (VB) [Entered: 11/27/2012 03:29 PM]

* * *

12/17/2012 22 Filed (ECF) Attorney Alan R. Smith, Esquire for Appellant The Village at Lakeridge, LLC in 12-1456's reply brief on appeal; served on 12/17/2012 email - Attorney for Appellants: Bubala, Chubb, Nassiri, Owens,

Rafatjoo, Smith, Whitwell; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (ARS) [Entered: 12/17/2012 03:22 PM]

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01/03/2013 26 Received and filed from Attorney Holly E. Estes for Appellant / Cross-Appellee The Village at Lakeridge, LLC (original and 4 copies) - APPELLANT / CROSS-APPELLEE AMENDED SUPPLEMENTAL APPENDIX. Served on 01/02/2013. [12-1456, 12-1474] (VB) [Entered: 01/03/2013 12:45 PM]

01/10/2013 27 Filed (ECF) Attorney Mr. Keith Charles Owens, Esquire for Appellee U.S. Bank National Association in 12-1456's fourth brief on cross-appeal; served on 01/10/2013 email - Attorney for Appellants: Bubala, Owens, Rafatjoo, Smith; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 01/10/2013 06:24 PM]

* * *

03/22/2013	30	ARGUED AND SUBMITTED TO Pappas, Kirscher and Taylor. [12-1456, 12-1474] (EC) [Entered: 03/22/2013 02:04 PM]

* * *

04/05/2013	32	CLOSED: Case closed: Affirmed in Part, Vacated in Part; Terminated on the merits after oral hearing; Written, Unsigned, Unpublished; Pappas, Kirscher and Taylor; 04/05/2013; NV-12-1474; Memorandum. (VB) [Entered: 04/05/2013 02:07 PM]
04/05/2013	33	FILED AND ENTERED JUDGMENT. [EOD] Date: 04/05/2013. Mandate to issue: 04/26/2013. (VB) [Entered: 04/05/2013 02:42 PM]
04/05/2013	34	LETTER AND DISPOSITION sent to Bankruptcy Court Judge Bruce T. Beesley. [12-1456, 12-1474] (VB) [Entered: 04/05/2013 02:54 PM]
04/05/2013	35	DISPOSITION AND NOTICE OF ENTRY OF JUDGMENT sent to parties and Bankruptcy Clerk. [12-1456, 12-1474] (VB) [Entered: 04/05/2013 03:03 PM]

04/19/2013	36	Notice of Appeal to the 9th Circuit (ECF) filed by Attorney Mr. Keith Charles Owens, Esquire for Appellee U.S. Bank National Association in 12-1456; Fee status: Not Paid; Receipt No.: ; served on 04/19/2013 served by: email - Attorney for Appellants: Estes, Smith; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 04/19/2013 01:44 PM]
04/23/2013	37	Filed (ECF) Attorney Mr. Keith Charles Owens, Esquire for Appellee U.S. Bank National Association in 12-1456, Attorney Mr. Keith Charles Owens, Esquire for Appellant U.S. Bank National Association in 12-1474's stipulation to stay further action pending appeal; 04/23/2013 served by: email - Attorney for Appellants: Estes, Owens, Smith, Whitwell; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 04/23/2013 01:58 PM]
04/25/2013	38	Filed ORDER (PAPPAS, KIRSCHER and TAYLOR); Stay pending the appeals to the Court of Appeals to maintain the status quo in the underlying chapter 11 case

		is ordered GRANTED. (See order for details.) [12-1456, 12-1474] (VB) [Entered: 04/25/2013 10:35 AM]
04/25/2013	39	CERTIFICATE OF RECORD filed and served as of 04/25/2013. Notice of Appeal transmitted to parties. Copy forwarded to 9th Circuit. (VB) [Entered: 04/25/2013 12:14 PM]
04/25/2013	40	NOTICE OF FILING OF APPEAL TO 9TH CIRCUIT sent to Reno, NV Bankruptcy Court. [12-1456, 12-1474] (VB) [Entered: 04/25/2013 12:34 PM]
04/26/2013	41	MANDATE ISSUED to Bankruptcy Court Reno, NV (NVR). (VB) [Entered: 04/26/2013 11:51 AM]
04/26/2013	42	Received 9TH CIRCUIT COURT OF APPEALS CASE NUMBER: 13-60039. (VB) [Entered: 04/26/2013 01:14 PM]
05/03/2013	43	Designation of Record and/or Statement of Issues (ECF) filed for Court of Appeals by Attorney Mr. Keith Charles Owens, Esquire for Appellee U.S. Bank National Association in 12-1456; served on 05/03/2013 served by: email - Attorney for Appellants: Owens,

		Rafatjoo, Smith; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (KCO) [Entered: 05/03/2013 02:07 PM]
05/17/2013	44	Designation of Record and/or Statement of Issues (ECF) filed for Court of Appeals by Attorney Holly E. Estes, Esquire for Appellant The Village at Lakeridge, LLC in 12-1456; served on 05/17/2013 served by: email - Attorney for Appellants: Bubala, Owens, Rafatjoo; Attorney for Appellees: Cossitt, Hartman, Strozza. [12-1456, 12-1474] (ARS) [Entered: 05/17/2013 04:10 PM]
09/09/2015	45	Record sent to Ninth Circuit on 09/09/2015; orig. [12-1456, 12-1474] (PI) [Entered: 09/09/2015 04:53 PM]
03/28/2017	46	Received from 9th Circuit U.S. Court of Appeals - COPY NOTICE, dated 03/27/2017, RE: Petition for a Writ of Certiorari Granted by the Supreme Court (RE: CA#: 13-60038 / BAP#: NV-12-1456 & CA#: 13-60039 / BAP#: NV-12-1474). (See notice for details.) [12-1456, 12-1474] (VB) [Entered: 03/28/2017 02:08 PM]

U.S. BANKRUPTCY COURT
DISTRICT OF NEVADA (RENO)

IN RE:

THE VILLAGE AT LAKERIDGE, LLC
AKA MAGNOLIA VILLAGE, LLC,

Debtor.

CIVIL DOCKET FOR PETITION #: 11-51994-BTB

Date Filed	#	Docket Text
06/16/2011	1	Chapter 11 Voluntary Petition. Fee Amount $1039. Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (SMITH, ALAN) (Entered: 06/16/2011)
		* * *
06/16/2011	5	*Corporate Resolution* Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (SMITH, ALAN) (Entered: 06/16/2011)
		* * *
09/14/2011	47	Disclosure Statement Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE,

		LLC (SMITH, ALAN) (Entered: 09/14/2011)
09/14/2011	48	Chapter 11 Plan of Reorganization #1 Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (SMITH, ALAN) (Entered: 09/14/2011)
		* * *
11/04/2011	76	Amendment to Section 7.3 of Debtor's Plan of Reorganization Filed by ALAN R. SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 48 Chapter 11 Plan #1 filed by Debtor THE VILLAGE AT LAKERIDGE, LLC) (SMITH, ALAN) (Entered: 11/04/2011)
		* * *
11/04/2011	78	Assignment/Transfer of Claim filed by THE VILLAGE AT LAKERIDGE, LLC (SMITH, ALAN) (Entered: 11/04/2011)
		* * *
11/16/2011	82	*First Amended* Disclosure Statement Filed by ALAN R SMITH on

behalf of THE VILLAGE AT LAKERIDGE, LLC (SMITH, ALAN) (Entered: 11/16/2011)

* * *

11/23/2011	84	Order Approving Debtor's First Amended Disclosure Statement. Confirmation hearing to be held on 2/2/2012 at 09:30 AM at BTB RN-Courtroom 2, Young Bldg.. (Related document(s) 82 Disclosure Statement filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.) (dlm) (Entered: 11/23/2011)

* * *

12/20/2011	95	Amended Order Approving Debtor's First Amended Disclosure Statement. Confirmation hearing to be held on 3/23/2012 at 10:00 AM at BTB RN-Courtroom 2, Young Bldg.. (Related document(s) 82 Disclosure Statement filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.) (lms) (Entered: 12/20/2011)

* * *

01/12/2012	108	Stipulation By THE VILLAGE AT LAKERIDGE, LLC and

Between U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE REGISTERED HOLDERS OF GREENWICH CAPITAL COMMERCIAL FUNDING CORP., COMMERCIAL MORTGAGE TRUST 2005-GG3, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-GG3 Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 48 Chapter 11 Plan #1 filed by Debtor THE VILLAGE AT LAKERIDGE, LLC) (SMITH, ALAN) (Entered: 01/12/2012)

01/12/2012	109	Amended Chapter 11 Plan Number One Second Amendment to Plan Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 48 Chapter 11 Plan #1 filed by Debtor THE VILLAGE AT LAKERIDGE, LLC)(SMITH, ALAN) Modified on 1/13/2012

to relate to #48 (Wenszell, GL). Modified on 1/13/2012 to remove SARD statistical data. (Wenszell, GL). (Entered: 01/12/2012)

* * *

07/01/2012 194 Application *U.S. BANKS MOTION TO (A) DESIGNATE CLAIM OF ROBERT RABKIN AS AN INSIDER CLAIM OR (B) DISALLOW SUCH CLAIM FOR VOTING PURPOSES PURSUANT TO 11 U.S.C. §§ 1126(E), 1129(A) AND 105(A)* Filed by LOUIS M. BUBALA III on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (BUBALA, LOUIS) (Entered: 07/01/2012)

* * *

07/01/2012 198 Declaration Of: KEITH C. OWENS Filed by LOUIS M. BUBALA III on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A.,

AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (Related document(s) 194 Miscellaneous Application filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION) (Attachments: # 1 Exhibit 1, Part 1 # 2 Exhibit 1, Part 2 # 3 Exhibit 1, Part 3 # 4 Exhibit 1, Part 4 # 5 Exhibit 1, Part 5 # 6 Exhibit 1, Part 6 # 7 Exhibit 2) (BUBALA, LOUIS) (Entered: 07/01/2012)

* * *

07/13/2012 213 Opposition Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 194 Miscellaneous Application filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL

ASSOCIATION.) (Attachments: # 1 Exhibit A) (SMITH, ALAN) (Entered: 07/13/2012)

07/13/2012 214 Declaration Of: Robert Rabkin Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 213 Opposition filed by Debtor THE VILLAGE AT LAKERIDGE, LLC) (SMITH, ALAN) (Entered: 07/13/2012)

* * *

07/18/2012 218 Reply *U.S. Bank's Reply in Support of Motion to (A) Designate Claim of Robert Rabkin as Insider Claim and (B) Disallow Such Claim for Voting Purposes Pursuant to 11 U.S.C. Section 1126(e)* Filed by KEITH C. OWENS on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (Related document(s) 194 Miscellaneous Application filed by Creditor U.S. BANK NATIONAL ASSOCIATION,

AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.) (OWENS, KEITH) (Entered: 07/18/2012)

* * *

07/19/2012 222 Opposition *Objection to Confirmation of Debtor's Plan of Reorganization* Filed by HAMID R. RAFATJOO on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (Related document(s) 48 Chapter 11 Plan #1 filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.) (RAFATJOO, HAMID) (Entered: 07/19/2012)

07/19/2012 223 Declaration Of: Hamid R. Rafatjoo *in Support of Objection to Confirmation of Debtor's Plan of Reorganization* Filed by HAMID R. RAFATJOO on behalf of U.S. BANK NATIONAL ASSOCIATION,

AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (Related document(s) 222 Opposition filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 - Part 1 of 6 # 3 Exhibit 2 - Part 2 of 6 # 4 Exhibit 2 - Part 3 of 6 # 5 Exhibit 2 - Part 4 of 6 # 6 Exhibit 2 - Part 5 of 6 # 7 Exhibit 2 - Part 6 of 6) (RAFATJOO, HAMID) (Entered: 07/19/2012)

* * *

07/20/2012 227 Amended Request for Judicial Notice *in Support of Objection to Confirmation of Debtor's Plan of Reorganization* Filed by HAMID R. RAFATJOO on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF

AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (Attachments: # 1 Exhibit A - Part 1 of 2 # 2 Exhibit A - Part 2 of 2 # 3 Exhibit B # 4 Exhibit C # 5 Exhibit D # 6 Exhibit E # 7 Exhibit F # 8 Exhibit G) (RAFATJOO, HAMID) (Entered: 07/20/2012)

07/23/2012 228 Supplement *Notice of Supplemental Authority Regarding U.S. Bank's Motion to (a) Designate Claim of Robert B. Rabkin as an Insider Claim or (b) Disallow Such Claim for Voting Purposes Pursuant to 11 U.S.C. 1126(e), 1129(a) and 105(a)* Filed by LOUIS M. BUBALA III on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (Related document(s) 194 Miscellaneous Application filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A.,

AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (BUBALA, LOUIS) (Entered: 07/23/2012)

* * *

07/26/2012 234 Reply Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 222 Opposition filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.) (SMITH, ALAN) (Entered: 07/26/2012)

* * *

07/27/2012 237 Declaration Of: Tod W. Little *In Support* Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 234 Reply filed by Debtor THE VILLAGE AT LAKERIDGE, LLC) (SMITH, ALAN) (Entered: 07/27/2012)

* * *

07/30/2012	240	Ballot Summary Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (SMITH, ALAN) (Entered: 07/30/2012)

* * *

07/30/2012	243	Supplemental Brief Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 213 Opposition filed by Debtor THE VILLAGE AT LAKERIDGE, LLC) (SMITH, ALAN) (Entered: 07/30/2012)

* * *

08/02/2012	246	Stipulation and Order as to Value of the Lender's Total Allowed Claim, Resolving Amended Objection to Claim of US Bank, and Vacating the Hearing Thereon. (Related document(s) 86 Objection to Claim filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.) (lms) (Entered: 08/02/2012)

* * *

08/20/2012	254	Order Granting U.S. Bank's Motion to (A) Designate Claim of Robert Rabkin as Insider Claim and (B) Disallow Such Claim For Voting Purposes (Related document(s) 194) (cly) (Entered: 08/20/2012)
08/29/2012	255	Transcript regarding Hearing Held on 08/01/12. The transcript may be viewed at the Bankruptcy Court Clerk's Office. For additional information, you may contact the Transcriber Avtranz, Telephone number 602-263-0885. Purchasing Party: Smith, Alan R.. Redaction Request Due By 09/19/2012. Redacted Transcript Submission Due By 10/1/2012. Transcript access will be restricted through 11/27/2012. (AVTRANZ) (Entered: 08/29/2012)
08/30/2012	256	Notice of Filing Official Transcript. (Related document(s) 255 Transcript) (cly) (Entered: 08/30/2012)
08/31/2012	257	Notice of Appeal. Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC. Fee Amount $298 Appellee designation due by 09/14/2012. (Related document(s) 254 Order on Miscellaneous Application.)(SMITH, ALAN) (Entered: 08/31/2012)

* * *

09/04/2012	260	Appeal Reference Number 12-09 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.) (mag) (Entered: 09/04/2012)
09/04/2012	261	Notice of Referral of Appeal to BAP. Appeal Reference # 12-09 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.)(mag) (Entered: 09/04/2012)
09/04/2012	262	Transmittal Form (BAP). Appeal Reference # 12-09 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.)(mag) (Entered: 09/04/2012)
09/04/2012	263	Appeal Memorandum. Appeal Reference # 12-09 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.)(mag) (Entered: 09/04/2012)
09/04/2012	264	Clerk Forwarded Appeal Documents to BNC for Noticing to: BAP (Related document(s) 257 Notice

of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.) (mag) (Entered: 09/04/2012)

09/05/2012 265 BAP Appeal Court Case # NV-12-1456 Appeal Reference # 12-09 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.) (mag) (Entered: 09/05/2012)

* * *

09/14/2012 277 Appellant Statement of Issues. Appeal Reference # 12-09 Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.)(SMITH, ALAN) (Entered: 09/14/2012)

09/14/2012 278 Appellant Designation of Record. Appeal Reference # 12-09 Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.)(SMITH, ALAN) (Entered: 09/14/2012)

09/14/2012	279	Cross Appeal. Filed by KEITH C. OWENS on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION Fee Amount $298. (Attachments: # 1 Appendix A # 2 Exhibit B) (Related document(s) 203 Order, 254 Order on Miscellaneous Application (OWENS, KEITH) Modified on 9/17/2012 to relate to #203 & #254 (DeVaney, HA). (Entered: 09/14/2012)

* * *

09/17/2012	281	Notice of Referral of Cross Appeal to BAP. Appeal Reference #12-10 (Related document(s) 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mrb) (Entered: 09/17/2012)

09/17/2012	282	Transmittal Form (BAP). Appeal Reference #12-10 (Related document(s) 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mrb) (Entered: 09/17/2012)
09/17/2012	283	Cross Appeal Memorandum. Appeal Reference #12-10 (Related document(s) 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mrb) (Entered: 09/17/2012)
09/17/2012	284	Clerk Forwarded Cross Appeal Documents to BNC for Noticing to: BAP (Related document(s) 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE,

SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mrb) (Entered: 09/17/2012)

* * *

09/19/2012 288 BAP Appeal Court Case #NV-12-1474, Appeal Reference #12-10 (Related document(s) 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mrb) (Entered: 09/19/2012)

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09/28/2012 297 Appellee Statement of Issues. Appeal Reference # 12-09 and 12-10 BAP # NV-12-1456 and NV 12-1474 *Statement of Issues on Cross-Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8006 (with Certificate of Service)* Filed by KEITH C. OWENS on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR

IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (Related document(s) 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.) (OWENS, KEITH) (Entered: 09/28/2012)

09/28/2012 298 Appellee Designation of Record. Appeal Reference # 12-09 and 12-10 BAP # NV-12-1456 and NV-12-1474 *Designation of Record on Cross-Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8006 (with Certificate of Service)* Filed by KEITH C. OWENS on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (Related document(s) 279 Cross Appeal filed

by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.) (OWENS, KEITH) (Entered: 09/28/2012)

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10/08/2012 309 Transcript regarding Hearing Held on 09/26/12. The transcript may be viewed at the Bankruptcy Court Clerk's Office. For additional information, you may contact the Transcriber AVTranz, Telephone number 605-263-0885. Purchasing Party: Alan R Smith. Redaction Request Due By 10/29/2012. Redacted Transcript Submission Due By 11/8/2012. Transcript access will be restricted through 01/6/2013. (AVTRANZ) (Entered: 10/08/2012)

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10/09/2012 310 Notice of Filing Official Transcript. (Related document(s) 309 Transcript) (cly) (Entered: 10/09/2012)

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10/12/2012	312	Supplemental Appellee Designation of Record. Appeal Reference # 12-09, 12-10 BAP # 12-1456, 12-1474 Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC., (279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(SMITH, ALAN) Modified on 10/16/2012 to Also Relate to #257 (Lakas, WM). (Entered: 10/12/2012)
10/16/2012	313	Certificate of Readiness Forwarded to: BAP. Appeal Reference #12-09, BAP #NV-12-1456 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC.)(mrb) (Entered: 10/16/2012)

10/16/2012	314	Certificate of Readiness Forwarded to: BAP. Appeal Reference #12-10, BAP #NV-12-1474 (Related document(s) 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mrb) (Entered: 10/16/2012)

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10/31/2012	317	Notice *Of Stay Pending Appeal* Filed by ALAN R SMITH on behalf of THE VILLAGE AT LAKERIDGE, LLC (SMITH, ALAN) (Entered: 10/31/2012)

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04/29/2013	336	(COPY) Order Granting Stay Pending Appeal to the Court of Appeals. Appeal Reference # 12-09 and 12-10 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC and (Related document(s) 279 Cross Appeal.)(mag) (Entered: 05/08/2013)

05/06/2013	334	Appeal Closed, Appeal Reference Number 12-09; Cross Appeal Closed, Appeal Reference Number 12-10 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC and 259 Cross Appeal) (mrb) Modified on 5/9/2013 APPEAL CLOSED IN ERROR (Burks, LG). (Entered: 05/06/2013)
05/06/2013	335	Notice *of Stay Pending Appeal* with Certificate of Service Filed by KEITH C. OWENS on behalf of U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION (OWENS, KEITH) (Entered: 05/06/2013)
05/08/2013	337	Ninth Circuit Appeal Court Case # 13-60038 - Appeal Reference No. 12-09 and 13-60039 Appeal Reference 12-10 (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC, 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION,

AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mag) (Entered: 05/08/2013)

* * *

02/10/2016 410 (COPY) OPINION - Ninth Circuit Appeal Court Case # 13-60038 - Appeal Reference No. 12-09 and 13-60039 Appeal Reference 12-10. (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC, 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mag) (Entered: 02/10/2016)

02/10/2016 411 (COPY) MEMORANDUM. Ninth Circuit Appeal Court Case # 13-60038 - Appeal Reference No. 12-09 and 13-60039 Appeal Reference 12-10. (Related document(s) 257

		Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC, 279 Cross Appeal filed by Creditor U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION.)(mag) (Entered: 02/10/2016)

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05/11/2016	418	Appeal Closed. (Related document(s) 257 Notice of Appeal filed by Debtor THE VILLAGE AT LAKERIDGE, LLC) (mag) (Entered: 05/11/2016)

* * * *

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

Case No. BK-N-11-51994-BTB
Chapter 11

In Re: THE VILLAGE AT LAKERIDGE, LLC,
a Nevada limited liability company,

Debtor.

NOTICE OF ASSIGNMENT OF CLAIM

[No Hearing Required]

NOTICE IS HEREBY GIVEN that Robert Alan Rabkin has acquired the claim of MBP Equity Partners 1, LLC, against the Debtor.

NOTICE IS FURTHER GIVEN that all future papers and notices regarding the claim shall be served on:

Robert Alan Rabkin
4790 Caughlin Pkwy #375
Reno, NV 89519

DATED this 4th day of November, 2011.

LAW OFFICES OF ALAN R. SMITH

By */s/ Alan R. Smith*
ALAN R. SMITH
Attorney for Cleve Canepa

ASSIGNMENT OF CREDITOR'S CLAIM

For the sum of $5,000.00 (the "Purchase Price"), the undersigned hereby assigns and transfers to Robert Alan Rabkin, all right, title and interest in that certain claim against The Village at Lakeridge, LLC, a Chapter 11 debtor in Bankruptcy Case No. BK-N-11-51994 (the "Case"), and all right to payment thereunder, said claim being in the scheduled amount of $2,761,000, (the "Claim"). Assignment is only for future distributions, if any.

This Assignment constitutes and embodies the complete understanding and agreement of the parties hereto. Undersigned warrants that the claim in the amount of $2,761,000 is valid, and has not previously been assigned, transferred or pledged to another person or entity, that undersigned owns and has title to the Claim free and clear of any and all liens, security interests or encumbrances, and that all payments on the claim have been credited and deducted.

Assignor is aware that the above Purchase Price may differ from the amount ultimately to be distributed in the Case with respect to the Claim. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representations whatsoever to Assignor regarding the status of the Case, the condition of the Debtor (financial or otherwise) or any other matter relating to the Case, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of the Debtor and the status of the

Case to make an informed decision regarding the sale of the Claim, and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the court in the Case), made its own analysis and decision to enter into this Assignment of Claim. Undersigned waives right to receive any further notices in the Case.

Assignor is aware that the purchase price for the Claim may differ from the amount ultimately to be distributed in the bankruptcy case with respect to the Claim, and waives all future right to payment on account of this Assignment.

This Assignment becomes effective upon endorsement of the check enclosed herewith, regardless of whether or not this Assignment is executed.

DATED this 27th day of October, 2011.

ASSIGNOR

MBP EQUITY PARTNERS 1, LLC

By *__/s/ Judith Fountain__*
It's Authorized Agent

Title: Member of the Board of Managers

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

Case No. 11-51994-BTB

Chapter 11

In re:

THE VILLAGE AT LAKERIDGE, LLC
AKA MAGNOLIA VILLAGE, LLC,

Debtor.

U.S. BANK'S MOTION TO (A) DESIGNATE CLAIM OF ROBERT RABKIN AS AN INSIDER CLAIM OR (B) DISALLOW SUCH CLAIM FOR VOTING PURPOSES PURSUANT TO 11 U.S.C. §§ 1126(e), 1129(a) and 105(a)

Hearing Date: OST Requested
Hearing Time: OST Requested

U.S. Bank National Association, as Trustee, as successor-in-interest to Bank of America, N.A., as Trustee, as successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Greenwich Capital Commercial Funding Corp., Commercial Mortgage Trust 2005-GG3, Commercial Mortgage Pass Through Certificates, Series 2005-GG3, by and through, CWCapital Asset Management LLC, solely in its capacity as Special Servicer (hereinafter referred to as the "*Lender*"), hereby moves this Court to: (a) designate the claim (the "*Insider Claim*" or the "*Rabkin Claim*")

of Robert Rabkin ("*Rabkin*") as an insider claim; or (b) disallow the Insider Claim for voting purposes pursuant to 11 U.S.C. §§ 1126(e), 1129(a) and 105(a).

In support of the Motion, the Lender states as follows:

INTRODUCTION

The Village at Lakeridge, LLC (the "*Debtor*") filed this commercial real estate bankruptcy case to stay a pending foreclosure proceeding. The Debtor's bankruptcy case is a two-party dispute between the Debtor and the Lender. In fact, the Lender filed the only proof of claim in this bankruptcy case. Under the Debtor's plan of reorganization (the "Plan"), the only other alleged prepetition creditors are (a) certain tenants that provided security deposits (the "*Tenant Security Deposit Claims*") to the Debtor,[1] and (b) the Debtor's Managing Member MBP Equity Partners I, LLC ("*MBP*"). MBP's claim relates to an alleged insider loan of $2,761,000.00 which predates the Debtor's prior bankruptcy filing as well.

1. Because the Debtor is assuming all of its leases, the tenants are not entitled to vote on the Plan. The Lender is objecting to the Tenant Security Deposit Claims by separate motion filed concurrently herewith (the "*Security Deposit Motion*").

Prior to the Court's approval of the Disclosure Statement in this case, the Debtor and MBP collaborated to assign MBP's insider claim to Rabkin. The sole purpose of the assignment of the Insider Claim was to gerrymander the votes needed to create an "impaired" consenting class of creditors to confirm a plan over Lender's objection. As discussed below, such manipulation of classification without any rehabilitative purpose is indicative of bad faith. *See, e.g., In re Hotel Associates of Tucson*, 165 B.R. 470 (B.A.P. 9th Cir. 1994) (remanding for a determination of the debtor's good faith, instructing the bankruptcy court to "recognize that the act of impairment in an attempt to gerrymander a voting class of creditors is indicative of bad faith.").[2]

As a result, the Insider Claim was sold to Rabkin for $5,000.00. Through discovery, the Lender has learned that not only is Rabkin a non-statutory insider due to his romantic relationship with Kathie Bartlett who is the managing member of MBP and the Debtor, but he is also a straw man for the Debtor whose sole purpose is to vote to accept the Plan.

As set forth in greater detail below, the Court should grant this Motion because: (i) the Insider Claim does

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2. Indeed, as discussed below, while the Lender's attempt to purchase Rabkin's claim "for the purpose of protecting [its] own existing claim does not demonstrate bad faith or an ulterior motive," *In re Figter Limited*, 118 F.3d 635, 639 (9th Cir. 1997), *cert. denied*, 118 S.Ct. 561 (1997), improper classification of a claim as "impaired" for the purpose of cramdown is indicative of bad faith. *See In re Hotel Associates*, 165 B.R. 470.

not lose its insider status simply because it was sold to Rabkin; (ii) Rabkin's vote should not be counted as Rabkin is a non-statutory insider; and (iii) the Insider Claim is disallowed for voting purposes due to the bad faith of the Debtor and Rabkin.

Based on the foregoing and the Security Deposit Motion, the Plan is unconfirmable as there are no impaired consenting classes of creditors. The Lender has filed this Motion prior to the ballot deadline in order to prevent the parties from embarking on a contested and expensive confirmation process when the Debtor has no ability to confirm its Plan.

FACTUAL AND PROCEDURAL BACKGROUND

A. Bankruptcy Filing

1. On June 16, 2011 (the "*Petition Date*"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "*Bankruptcy Code*"), thereby commencing this bankruptcy case (the "*Case*"). This is the Debtor's second bankruptcy. The prior bankruptcy was filed on September 8, 2006 under the name Magnolia Village, LLC.

2. As evidenced by the only Proof of Claim filed in this Case, the Lender has a secured claim in the amount of at least $21,860,052.37 against the Debtor's bankruptcy estate. The Lender's claim is secured by first priority, perfected liens on substantially all of Debtor's assets, including the real property and improvements with a

common address of 6900-6990 South McCarran Boulevard, Reno, Nevada, 89509 (the "*Property*") and proceeds and cash collateral derived therefrom. In addition, the Lender holds an absolute assignment of rents. For purposes of confirmation, the Debtor and the Lender stipulated that the value of the Property is $10,800,000. *See* Stipulation as to Value of Property at Plan Confirmation [Docket No. 108] (the "*Stipulation*").

3. On September 14, 2011, the Debtor filed its Disclosure Statement [Docket No. 47] (as amended, the "*Disclosure Statement*") and its initial Plan of Reorganization (the "*Plan*"). The Debtor modified its initial Plan on November 4, 2011 [Docket No. 76] and January 12, 2012 [Docket No. 109]. The proposed treatment under the Plan can be summarized as follows:

- *Class 1—Secured Claim of U.S. Bank*: Despite the Lender's Bankruptcy Code § 1111(b) election, the Debtor would issue a new note in the amount of the value of the Property with a ten-year term, a balloon payment at the end of the term, an interest rate of 4.25%, and amortizing payments based on a thirty-year term. The new note would be secured by the Property, and the interest payable to the Lender would be capped by the Debtor's "Monthly Net Income," the consequence of which is that the note to the Lender would be subject to negative amortization. Alternatively, the Debtor would provide the Lender U.S.

Treasury Bonds with a present value of $10,800,000 and a stream of payments equal to the amount owing under the Lender's loan documents. Contrary to the requirements of Bankruptcy Code § 1111(b), the Lender would be required to release its lien upon receipt of the U.S. Treasury Bonds.

- *Class 2—U.S. Bank Deficiency Claim*: As a result of the Lender's election pursuant to Bankruptcy Code § 1111(b), this class is now moot.

- *Class 3—Unsecured Claims*: The Class 3 claimant, Robert Rabkin, an individual who took an assignment of the Insider Claim held by the Debtor's equity owner, and the Tenant Security Deposit Claims, would receive $30,000.00 on the effective date of the Plan.

- *Class 4 Membership Interests*: Despite not providing any capital contribution, the Debtor's member will retain its membership interest.

ASSIGNMENT OF INSIDER CLAIM

4. On or about October 27, 2011, MBP sold and assigned the Insider Claim in the amount of $2,761,000.00 to Rabkin for $5,000.00. The Assignment occurred 11 days prior to November 7, 2011 hearing on the Disclosure Statement. *See* Notice of Assignment of Claim (Docket No. 78).

5. The Plan has classified the Rabkin Claim as a Class 3 general unsecured claim that would be entitled to share a single distribution in the amount of $30,000.00 on a *pro rata* basis with general unsecured creditors. *See* Second Amendment to Debtor's Plan of Reorganization, at 2, § 4.3 (Docket No. 109). Because the other general unsecured creditors are the Debtor's tenants whose leases are being assumed, there are no other general unsecured claims. Therefore, Rabkin will recover the entire $30,000 distribution.

6. On June 7, 2012, the Lender took Rabkin's deposition to learn about his interest in this case (the "Rabkin Deposition").

7. Rabkin testified that he purchased the Insider Claim for $5,000.00 as a "business investment,"[3] and that other than getting paid the $30,000.00 offered to unsecured creditors under the Plan, he had "no other interest in the Village at Lakeridge."[4] Rabkin also testified that he understood that the maximum amount that he would recover in the Debtor's bankruptcy was $30,000.00 in accordance with the terms of the Plan, and that he understood that there was a risk that he would get paid nothing at all if the Plan was not confirmed.[5]

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3. *Id.* at p. 75:16-25.

4. *Id.* at p. 82:3-14.

5. *Id.* at p. 75:4-20.

8. At the conclusion of the Rabkin Deposition, Lender offered to purchase the Insider Claim for $50,000.00, and proffered a cashier's check in the amount of $50,000.00, along with an Assignment of Claim Agreement.[6] The Assignment of Claim Agreement provided that the Lender's purchase of the Insider Claim was on an "as is, where is" basis with no representations or warranties other than that Rabkin owned the Insider Claim and had not transferred or assigned the claim. It specifically stated that Lender would not have any recourse against Rabkin if the Lender recovered less than $30,000.00, or nothing at all, if the Court denied Plan confirmation, or if the Insider Claim was disallowed.[7] In other words, Rabkin would immediately be paid $20,000 more than the maximum amount under the Plan without any risk.

9. Rabkin responded that he would "consider" the offer but failed to accept the offer in direct contradiction to his testimony that his purchase of the Insider Claim was a pure "business investment" and that he had "no other interest in the Village at Lakeridge."

10. As evidenced by his action, Rabkin is not a third party investor looking for an economic gain. Not only did

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6. *Id.* at p. 84:6 - 87:18. *See also* Exhibit "2" to the Owens Declaration. The offer was not an offer in compromise as the Lender and Rabkin do not have any claims against one another. Rather, the offer was intended to acquire a claim to protect Lender's interest as a secured creditor, which is permitted in the Ninth Circuit. *See In re Figter Limited*, 118 F.3d 635, 639 (9th Cir. 1997), *cert. denied*, 118 S.Ct. 561 (1997).

7. *See* Exhibit "2" to the Owens Declaration.

Rabkin not accept a 66% greater recovery, but he did not make a counter offer to the Lender's $50,000 offer.

11. Rabkin is a shill for the Debtor.[8] He has had a long term personal friendship with Kathie Bartlett[9] and has a romantic relationship with Ms. Bartlett.[10] He did not purchase the Insider Claim as a business investment. He performed no due diligence in connection with the purchase of the Insider Claim. He was directed by his girlfriend to purchase her claim and vote to accept the Plan.

12. The Debtor's representative is making a mockery of the Chapter 11 process by attempting to confirm a Plan by selling MBP's insider claim to her boyfriend, and calling it an impaired consenting class. The Motion must be granted.

RELIEF REQUESTED

By this Motion, Lender requests that the Court rule (a) the Insider Claim does not lose its insider status because it

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8. The Debtor has not bothered to serve Rabkin with a single document in this case and Rabkin has not requested service of any documents.

9. *See* Exhibit "1: to the Owens Declaration; Tr. of Deposition of Robert Alan Rabkin, at pp. 42:1-25 to 44:12. Ms. Bartlett was the "Person Most Knowledgeable" designated by the Debtor and MBP, serving as both the Debtor's "Responsible Person" and MBP's Managing Member.

10. *Id.* at p. 98:14-18.

was sold to Rabkin: (b) Rabkin is a non-statutory insider because of his relationship with the Debtor's insider; and (c) the Insider Claim is disallowed for voting purposes under Sections 1126(e) and 105(a) of the Bankruptcy Code due to the bad faith of the Debtor and Rabkin.

BASIS FOR RELIEF REQUESTED

A. The Rabkin Claim Cannot be Considered in Determining Whether There is an Accepting Class Pursuant to Sections 1126(e), 1129(a) and 105(a) of the Bankruptcy Code

Section 1126(e) of the Bankruptcy Code provides: "On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title." 11 U.S.C. § 1126(e). Bankruptcy courts are empowered to decide a preemptory motion to disallow ballots of a creditor prior to plan confirmation. *See In re Kovalchick*, 175 B.R. 863, 874 (Bankr. E.D. Pa. 1994) (considering motion to designate claim prior to plan confirmation); *In re Pleasant Hill Partners, L.P.*, 163 B.R. 388, 389 (Bankr. N.D. Ga. 1994) (same).

In the instant case, the Rabkin Claim should be disallowed for voting purposes on the grounds that his vote would not be consistent with his self-interest as a creditor and constitutes bad faith. Specifically, the Debtor and MBP have attempted to manipulate the plan confirmation

process by selling the MBP's Insider Claim to Rabkin (who was not a pre-existing creditor) for a nominal amount and attempting to use the Insider Claim to artificially create an impaired consenting class for purposes of confirming a cramdown plan over Lender's objection. Additionally, Rabkin's testimony regarding his close friendship and romantic relationship with Ms. Bartlett, his stated inability to recall any of the material circumstances regarding his purchase of the Insider Claim, and his failure to conduct any due diligence concerning the purchase of the Insider Claim, combined with Rabkin's rejection of Lender's offer to purchase the Insider Claim for $20,000.00 more than Rabkin would otherwise receive if the Insider Claim is ultimately allowed and the Plan is confirmed, reveals that MBP's assignment of the Insider Claim to Rabkin was done in bad faith, and was solely designed to artificially create an impaired consenting class and is an effort to gain an unfair advantage over the Lender. Accordingly, the Court should disallow the Insider Claim for voting purposes under Sections 1126(e), 1129(a), and 105(a) of the Bankruptcy Code.

B. Rabkin's Vote Should Not be Considered Because the Rabkin Claim is an Insider Claim

As a threshold matter, Rabkin's vote should not be considered because the Rabkin Claim is an "insider" claim that was improperly designated as a Class 3 unsecured claim in order to create an "impaired" consenting class for purposes of cramdown. However, improper classification of claims for purpose of gerrymandering to create an impaired, consenting class is indicative of bad faith and

should not be permitted. *See, e.g., In re Hotel Associates of Tucson*, 165 B.R. 470 (B.A.P. 9th Cir. 1994) (remanding for a determination of the debtor's good faith, instructing the bankruptcy court to "recognize that the act of impairment in an attempt to gerrymander a voting class of creditors is indicative of bad faith.").

Section 1129(a)(10) of the Bankruptcy Code does not permit an insider to vote on a chapter 11 plan. Section 101(31) of the Bankruptcy Code defines an "insider" of a corporation as a (i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor or (vi) relative of a general partner, director, officer or person in control of the debtor. Courts regularly treat this definition as illustrative of the types of possible insider relationships, rather than an exhaustive list. *Anstine v. Meditec (In re U.S. Med. Inc.)*, 531 F.3d 1272, 1276 (10th Cir. 2008). Managing members of limited liability companies have been held to be insiders for purposes of Section 101(31). *In re Longview Aluminum, L.L.C.*, 657 F.3d 507 (7th Cir. 2011); *see also Solomon v. Barman (In re Barman)*, 237 B.R. 342 (Bankr. E.D. Mich. 1999) (holding that a limited liability company that had filed a bankruptcy qualified as an insider of two Chapter 7 debtors (a husband and wife) who owned interests in the limited liability company).

As discussed more thoroughly below, courts have found that several types of relationships with the debtor can lead to the conclusion that such entities or individuals are insiders. These relationships have included, but are not

limited to, close personal friends of the debtor, a member in limited liability company owned in part by the debtor, a live-in girlfriend, and others.

1. Rabkin's Claim Maintains Its Characteristics as an Insider Claim

As a preliminary matter, the Insider Claim was originally held by MBP, which owns 100% of the membership interests of the Debtor, and is the Debtor's Managing Member. "As a general rule, 'an entity which acquires a claim steps into the shoes of that claimant, enjoying both the benefits and the limitations of the claim, as a successor in interest.'" *In re Holly Knoll P'ship*, 167 B.R. 381, 385 (Bankr. E.D. Pa.1994) (quoting *In re Applegate Property*, 133 B.R. at 833); *see also Enron Corp. v. Springfield Assoc., LLC (In re Enron Corp.)*, 379 B.R. 425, 435-36 (S.D.N.Y. 2007) ("[A]n assignee stands in the shoes of the assignor and [is] subject to all equities against the assignor. In other words 'an assignee of a claim takes with it whatever limitations it had in the hands of the assignor.'. . .").

As several courts have noted, "the operation of section 1129(a) would be seriously undermined [if the] Debtor[ ] [who is] unable to obtain the acceptance of an impaired creditor[,] simply could assign insider claims to third parties who in turn could vote to accept. This the court cannot permit." *Three Flint Hill Ltd. P'ship v. Prudential Ins. Co. (In re Three Flint Hill Ltd. P'ship)*, 213 B.R. 292, 299 (D. Md. 1997) (affirming denial of confirmation, noting that claimant's purchase of claim was not a

"carefully reasoned business decision," but instead an accommodation to a friend or business partner); *see also Matter of Heights Ban Corp.*, 89 B.R. 795, 799 (Bankr. S.D. Iowa 1988) (noting that if the court were to deviate from the general rule of prohibiting purchasers of insider claims from voting their claims, "[d]ebtors unable to obtain the acceptance of an impaired creditor simply could assign insider claims to third parties who in turn could vote to accept. This the court cannot permit.").

Accordingly, because MBP would not be entitled to vote the Insider Claim under Section 1129(a)(10), Rabkin should be precluded from voting the Insider Claim.

2. Rabkin is a Non-Statutory Insider

Alternatively, even if the Court concludes that the Insider Claim sold to Rabkin does not fall within the strict definition of an "insider" claim for purposes of Section 101(31) of the Bankruptcy Code, Rabkin should nevertheless be designated a "non-statutory insider" given his romantic involvement and very close friendship with Ms. Kathie Bartlett, and evidence that Rabkin's purchase of the Insider Claim was not an arms-length transaction. Section 101(31) provides that an "insider" in the case of a corporation "includes" directors, officers of the debtor, and several others. As discussed above, if creditors fall into one of the specifically enumerated categories, they constitute "statutory" insiders. However, by adding the word "includes," Congress did not intend the list of enumerated insiders to be exhaustive. *See In re U.S. Med. Inc.*, 531 F.3d at 1276 (*citing Rupp v. United*

Sec. Bank (In re Kunz), 489 F.3d 1072, 1078-79 (10th Cir. 2007)). Congress intended the list to be illustrative only and to include other insiders as well, who are commonly referred to as "nonstatutory insiders." *Id.* The legislative history provides that an "insider" is defined as "one who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor." H.R. Rep. No. 95-595 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6269, 1977 WL 9628; S.Rep. No. 95-989 (1978), *reprinted in* 1978 U.S.C.C.A.N 5787, 5810. In determining whether a person is a non-statutory insider, courts generally focus on two basic factors: (1) the closeness of the relationship between the debtor and the transferee; and (2) whether the transaction between the transferee and the debtor was conducted at arm's length. *See In re U.S. Med. Inc.*, 531 F.3d at 1278; *Matter of Krehl*, 86 F.3d 737, 741-42 (7th Cir. 1996); *see also Shubert v. Lucent Techs., Inc. (In re Winstar Commc'ns, Inc.)*, 554 F.3d 382, 396-97 (3d Cir. 2009) (rejecting argument that only a "person in control" could be an insider, and holding that "the question is whether there is a close relationship [between debtor and creditor] and ... anything other than closeness to suggest that any transactions were not conducted at arm's length.") (internal citations omitted).

Several courts have held that insider status can be based on a romantic relationship between a debtor and another individual. *See e.g., Kaisha v. Dodson*, 423 B.R. 888, 901 (N.D. Cal. 2010) (finding in the context of a preferential transfer lawsuit that a woman with whom the debtor was romantically involved prior to the transfer

of stock was an insider even though they asserted they were not together at the time of the transfer); *Walsh v. Dutil (In re Demko)*, 264 B.R. 404, 408 (Bankr. W.D. Pa. 2001) (cohabitation by two people may render individual an insider, noting that "[t]he true test of 'insider' status is whether one's dealings with the debtor cannot accurately be characterized as arm's-length.'") (citations omitted); *Freund v. Heath (In re McIver)*, 177 B.R. 366 (Bankr. N.D. Fla. 1995) (holding in context of preferential transfer litigation that a live-in girlfriend may be an insider); *Castellani v. Kohne (In re Kucharek)*, 79 B.R. 393 (Bankr. E.D. Wis. 1987) (holding relationship between man and woman, although platonic, was one of such deep trust that man was deemed an insider).

Insider status can also be based on professional or business relationships with the debtor. *See, e.g., Friedman v. Sheila Plotsky Broker, Inc., (In re Friedman)*, 126 B.R. 63, 70 (B.A.P. 9th Cir. 1991) (explaining that an insider relationship can exist that does not fit into statutory classifications, "where such relationship compels the conclusion that the individual or entity has a relationship with the debtor, close enough to gain an advantage attributable simply to affinity rather than to the course of business dealings between the parties."); *Hirsch v. Tarricone* (*In re A. Tarricone, Inc.*), 286 B.R. 256 (Bankr. S.D.N.Y. 2002) (holding that "golfing budd[y]" and close personal friend of the debtor's principal shareholder may be an insider). Based on the case law and the definition in the legislative history, an "insider" is one who does not deal at arm's length with the debtor, and can include parties who have a very close personal relationship including a romantic relationship.

In the instant case, Rabkin, should be designated as an insider. He testified that he had a romantic relationship with Ms. Bartlett, who is the designated representative of both the Debtor and MBP.[11] He also testified that he purchased the Insider Claim as a "business investment,"[12] and that other than getting paid the $30,000.00 provided for unsecured creditors under the Plan, he had "no other interest in the Village at Lakeridge."[13]

Rabkin also testified that he understood that the maximum amount that he would recover in the Debtor's bankruptcy was $30,000.00 in accordance with the terms of the Plan, and that he understood that there was a risk that he would get paid nothing at all if the Plan was not confirmed.[14] He refused to accept U.S. Bank's offer to purchase the Insider Claim for $50,000.00, without any conditions or ability to claw back those funds. See Exhibit "2" to the Owens Declaration.[15]

As discussed above, it is abundantly clear from Rabkin's testimony that this was not an arms-length

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11. *See* Exhibit "1" to the Owens Declaration; Rabkin Deposition, at p. 98:14-18.

12. *Id.* at p. 75:16-25,

13. *Id.* at p. 82:3-14.

14. *Id.* at p. 75:4-20.

15. Indeed, U.S. Bank offered to give Rabkin seven days to accept the $50,000.00 offer, or alternatively, to sell the claim to Rabkin for $60,000.00 on June 7, 2012. Rabkin said that he would "consider" both offers, and such offers have expired. *Id.* at p. 97:6-15.

transaction, and that Rabkin does not have a legitimate interest in reorganization. Indeed, Rabkin's testimony that he could not recall any of the material details of the assignment of the Rabkin Claim,[16] was not served with any of the bankruptcy pleadings (including the Notice of Assignment, Plan or Disclosure Statement),[17] and had not reviewed the Notice Assignment of Claim, the Plan, the Schedules, or any other documentation at any time prior to the Rabkin Deposition, is not credible and illustrates the illegitimate purpose of the assignment of the Insider Claim to Rabkin. Rabkin's lack of awareness regarding any material events in the Chapter 11 case, or the circumstances surrounding his own acquisition of the Insider Claim, is inconsistent with the behavior of an experienced investor as he claims to be.[18] Rabkin is a shill for the Debtor. He acquired the Insider Claim to help create an impaired, consenting class, and has no legitimate interest in the outcome of the reorganization. Rabkin's interest is in fulfilling his instruction from Ms. Bartlett. Because the point of Section 1129(a)(10) is to prevent the Bankruptcy Court from becoming a "dumping ground for two party disputes," an accepting impaired class "must have a genuine interest in the reorganization." *Life Ins. Co. v. Barakat (In re Barakat)*, 173 B.R. 672, 681 (Bankr. C.D. Cal. 1994) (inasmuch as former tenant owed security deposit is not a creditor with a "genuine interest in reorganization," his acceptance should not permit

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16. *See* Exhibit "1" to the Owens Declaration, Tr. of Robert Alan Rabkin, at pp. 47:25 to 51:3; 54:20 to 57:21.

17. *Id.* at pp. 65: 16-22; 66: 6-9; 73:7-10; 74:20-22.

18. *Id.* at pp. 61:4 to 62:14; 63:2-6; 65:16 to 73:10; and 76:2 to 79:22.

imposition of "cram down" reorganization on principal creditor); *see also In re Franklin Mortgage & Inv. Co., Inc.*, 143 B.R. 295, 300 n.1 (Bankr. D. Colo. 1992) (noting in case where the only unsecured creditor was an accounting firm owed $5,000.00, and the objecting secured creditor was owed $2,250,000.00, "to allow the accounting firm's claim to serve that purpose would be a true case of the tail wagging the dog"). In this case, notwithstanding his testimony to the contrary, Rabkin may have a personal interest in seeing the Debtor's Plan confirmed for Ms. Bartlett's sake. However, given his testimony and failure to accept an offer that would provide him with a minimum of an additional $20,000.00 more than his claim is worth (without any recourse by the Lender in the event the Plan is not confirmed or the claim is disallowed), he does not possess a legitimate business interest in the Debtor's reorganization. Accordingly, the Rabkin Claim must be designated as an insider claim and disallowed for voting purposes.

CONCLUSION

For the foregoing reasons, Lender requests that the Court (A) designate the Rabkin Claim as an "insider claim," and (B) disallow the Rabkin Claim for voting purposes. Lender requests all other relief that the Court deems just and proper.

Dated: June 29, 2012 VENABLE LLP

By: /s/_____
Keith C. Owens
Attorneys for Movant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

THE VILLAGE AT LAKERIDGE, LLC,
a Nevada limited liability company,

Debtor.

Hearing Date: July 19, 2012
Hearing Time: 2:00 p.m.

OPPOSITION TO U.S. BANK'S MOTION TO (A) DESIGNATE CLAIM OF ROBERT RABKIN AS AN INSIDER CLAIM OR (B) DISALLOW SUCH CLAIM FOR VOTING PURPOSES PURSUANT TO 11 U.S.C. §§ 1126(E), 1129(A), AND 105(A)

Debtor, THE VILLAGE AT LAKERIDGE, LLC, by and through its counsel, Alan R. Smith, Esq., of the Law Offices of Alan R. Smith, hereby opposes U.S. Bank's Motion To (A) Designate Claim of Robert Rabkin As An Insider Claim Or (B) Disallow Such Claim For Voting Purposes Pursuant To 11 U.S.C. §§ 1126(e), 1129(a), and 105(a) [DE194] ("Motion"). This opposition is based upon the following points and authorities, the Declaration of Robert Rabkin in support hereof, the pleadings and papers on file herein, and such other matters as may appear at any oral hearing thereon.

POINTS AND AUTHORITIES

1. In November of 2012, Dr. Robert Rabkin ("Dr. Rabkin") acquired the claim of MBP Equity Partners I, LLC. The claim is an unsecured claim in the amount of $2,761,000.00 against the Debtor, which Dr. Rabkin acquired for the sum of $5,000.00.

See Declaration of Robert Rabkin.

2. A Notice of Assignment of Claim [DE 78] (the "Notice") was filed with the Court on November 4, 2011. The assignment of claim (the "Assignment") is attached to the Notice. The Assignment clearly states that it is for future distributions if any. *Id.*

3. On June 7, 2012, Robert Rabkin presented himself for a deposition in this matter and was deposed by Keith Owens, an attorney for the lender, U.S. Bank. Dr. Rabkin was asked questions regarding the purchase of his claim.

4. Much to Dr. Rabkin's surprise, toward the end of his deposition, Keith Owens made an offer to purchase Dr. Rabkin's claim for $50,000.00 cash in the form of a cashier's check. *Id.; See Dr. Rabkin Deposition Transcript attached to the Motion as* ***Exhibit "1-3"***. At the onset of negotiations Dr. Rabkin informed Keith Owens that he was not prepared to negotiate at his deposition, and that it was Dr. Rabkin's understanding that he was there to be asked questions regarding what he knows and what he has done. *Id.* at p.86.

5. Keith Owens badgered Dr. Rabkin for some time imploring Dr. Rabkin to accept U.S. Bank's offer. *See Declaration of Robert Rabkin; See also, Dr. Rabkin Deposition Transcript pp. 83-100 attached to the Motion as* ***Exhibit "3"***. Dr. Rabkin informed Keith Owens numerous times that he would consider the offer. *Id.* As stated in his deposition, Dr. Rabkin is not an impulsive person, and he generally takes time to think about these type of things. *See generally Dr. Rabkin Deposition Transcript pp. 42-43.*

6. Next, to escalate the pressure even more, Keith Owens increased the cash offer to purchase Dr. Rabkin's claim from $50,000.00 to $60,000.00. *Id.* Keith Owens informed Dr. Rabkin that he would have to accept his offer for $60,000.00 that same day, or the offer was gone. Dr. Rabkin was amazed that Keith Owens would engage in negotiations during the course of Dr. Rabkin's deposition. *Dr. Rabkin Deposition Transcript p. 87.* Dr. Rabkin was and is insulted by what he believed to be overreaching and browbeating by U.S. Bank and Keith Owens. *Declaration of Robert Rabkin.*

7. Upon further discussion with his counsel, and after a period of time, Dr. Rabkin has concluded that he is unwilling to sell his claim to U.S. Bank.

8. Because Robert Rabkin did not give in to the harassing offer to purchase his claim, U.S. Bank has now filed its Motion To (A) Designate Claim of Robert Rabkin As An Insider Claim Or (B) Disallow Such Claim For Voting Purposes Pursuant To 11 U.S.C. §§ 1126(e), 1129(a),

and 105(a) as a last ditch effort to block confirmation of the Debtor's proposed plan of reorganization.

A. Robert Rabkin's Claim Should Not Be Designated

"A right to vote on a plan is a fundamental right of creditors under Chapter 11." *In re Adelphia Commc'ns Corp.*, 359 B.R. 54, 61 (Bankr. S.D. N.Y. 2006). Designation of a vote is a drastic remedy and a party seeking it has a high burden of proof. *See In re DBSD N. Am., Inc.*, 634 F.3d 79, 101-102 (2nd Cir 2011). ("Bankruptcy courts should employ § 1126(e) sparingly, as 'the exception, not the rule.'); *See Adelphia*, 359 B.R. at 61 ("Designation of a creditor's vote is a drastic remedy...."). Bankruptcy Code § 1126(e) is "intended to apply to those who were not attempting to protect their own property interests, but who were, instead, attempting to obtain some benefit to which they were not entitled." *In re Fighter*, 118 F.3d at 639; *See In re Gilbert*, 104 B.R. 206, 216 (Bankr. W.D. Mo. 1989) (the standard is whether "creditor has cast his vote with an 'ulterior purpose' aimed at gaining some advantage to which he would not otherwise be entitled in his position.") A selfish motive is insufficient to establish that a vote was not cast in good faith. *In re Fighter*, 118 F.3d at 639. Creditors are not "expected to approach reorganization plan votes with a high degree of altruism and with the desire to help the debtor and their fellow creditors." *Id.*

A decision as to whether someone acted in bad faith is essentially a factual inquiry and is driven by the data of

practical human experience. *In re Fighter Ltd.*, 118 F.3d 635, 638 (9th Cir. 1997) citing *United States v. McConney*, 728 F.2d 1195, 1203-04 (9th Cir. 1984). The court in *In re Fighter* reasoned that "[p]rior cases can offer guidance, but, when all is said and done, the bankruptcy court must simply approach each good faith determination with a perspicacity derived from the data of its informed practical experience in dealing with bankrupts and their creditors." *Id.* at 639.

U.S. Bank asserts in its Motion that "the Rabkin claim should be disallowed for voting purposes on the ground that his vote would not be consistent with his self interest as a creditor and constitutes bad faith." Motion p. 8, l. 14-15. As stated in his deposition testimony, Dr. Rabkin purchased the claim as a business decision. Q: "Why did you purchase the claim from MBP Equity Partners?" A: "It was an investment." Q: "So it was a business investment?" A: "Correct." *Deposition Transcript of Robert Rabkin p. 78.*

U.S. Bank goes on to argue its "conspiracy theory" by stating that the Debtor and MBP Equity Partners have attempted to manipulate the plan confirmation process by selling the MBP insider claim to Dr. Rabkin in an attempt to artificially create an impaired consenting class for purposes of confirming the Debtor's plan of reorganization. At the Deposition of Kathie Bartlett, she stated that MBP Equity Partners sold its claim to Robert Rabkin because it was valueless to MBP, it wasn't worth anything to it, and MBP thought it might be worth something to somebody else. *See Deposition Transcript*

of Kathie Bartlett attached hereto as ***Exhibit "A"*** *p. 59.* In fact, Kathie Bartlett approached Dr. Rabkin, a friend, with a potential investment offer. *Id.* at 57. She knew he was invested in several different kinds of things. *Id.* Ms. Bartlett stated that the terms of the sale were that she offered to sell the claim to Dr. Rabkin, and he agreed to buy it. Q: "He paid $5,000, took the claim, and whatever treatment he gets in the bankruptcy case, he gets?" A: "Yes." *Id.*

At the deposition of Robert Rabkin he was asked a similar line of questioning: Q: "What is your general recollection as to what [Kathie Bartlett] said during that first discussion about the claim?" A: "My recollection, all I can recall is that she said that there was a claim and it was going to be sold and she indicated that I could buy it." *Deposition of Robert Rabkin p.37.* Q: "What did Kathie Bartlett tell you you needed to do to acquire the claim from MBP Equity Partners" A: "Pay, $5,000." *Id.* at 65. Q: "Did Ms. Bartlett tell you at any time that you will get paid on your claim in the Village at Lakeridge bankruptcy?..." A: "How could she tell me I was going to get paid? I don't understand how she would have been able to tell me that... the answer is no."

Accordingly, there has been no manipulation of the plan process. There was a claim that was valueless to MBP Equity Partners that it wanted to sell. Robert Rabkin happened to be the person who purchased the claim. The claim was purchased as an investment/business opportunity. As stated below, there were no other terms of the transaction, and there was no promise from Dr. Rabkin to vote in favor of the plan.

Q: "Now are there any other terms of the transaction that aren't discussed in the Assignment of Creditor's claim?" A: "No, I don't understand what you mean about terms. We agreed to sell the claim... and he agreed to buy it." *Deposition of Kathie Bartlett* at 59. Q: "Has MBP, or anyone else for that matter, made any other agreements or understandings with Mr. Rabkin regarding the claim, other than as reflected in the assignment?" A: "No." *Id.* When Robert Rabkin was asked: "Were you asked to vote in favor of the plan of reorganization." He answered: "No." Q: "In connection with your purchase of the claim?" A: "No."

U.S. Bank argues that because Dr. Rabkin has a relationship with Kathie Bartlett, and because he did not accept U.S. Bank's crude offer to purchase his claim those facts "reveal" that the claim was assigned in bad faith. Dr. Rabkin should not be crucified for having a relationship with Kathie Bartlett. Dr. Rabkin is an intelligent man (an ex-surgon), with his own mind, and his own money. Further, Kathie Bartlett is the only one of MBP Equity Partners' five managing members that Dr. Rabkin knows. There is no impropriety here, and no real evidence to show this was anything but an arms-length transaction. Further, I doubt this Court would find it hard to believe that after being badgered, Dr. Rabkin turned down U.S. Bank's inappropriate offer to purchase his claim.

B. Robert Rabkin's Claim Is Not An Insider Claim Simply Because He Purchased The Claim Of An Insider

The court in *In re Concord Square Apts. of Wood County, Ltd.*, 174 B.R. 71, (Bankr. S.D. Ohio 1994) held that "the 'insider' status of a claimant does not, as a matter of law, transfer with a claim upon the sale or assignment of that claim to a third party. Such status does not transfer as a matter of law for two reasons. First, in bankruptcy, a distinction is made between the status of a claim and the status of a claim holder. That distinction precludes 'insider' status from tainting the status of a claim. Second, the status of a third party transferee as an 'insider' is a question of fact to be determined after any transfer takes place." *Id.* "In the context of §1129(a)(10), the determination of insider status is made at the time the vote is taken, not at the time the claim arises." *In re Mcorp Financial, Inc.*, 137 B.R. 219, 232 (Bankr. S.D. Tex 1992). Contrary to U.S. Bank's assertion, a once insider claim may lose its insider status if the transferee is not determined to be an insider his or herself. *See Id.* The question then, is whether Dr.Rabkin is an insider.

C. Robert Rabkin Is Neither An Insider Under 11 U.S.C. §§ 1129(a) and 101(31), Nor A Non-Statutory Insider

An insider pursuant to §101(31) includes an affiliate of the debtor. Whether an entity is an insider is a question of fact that must be determined on a case by case basis. *In re Mcorp Financial, Inc.*, 137 B.R. at 232. The true

test of an insider is one who has such a relationship with the debtor that their dealing with one another cannot be characterized as arms-length transactions. *Id.; In re Bella Vista by Paramont, LLC,* 2011 WL 3303258, at *5 (9th Cir. B.A.P. Mar. 11, 2011). The controlling considerations are the closeness of the parties and the relative degree of control each has over the other. *Id.* "[N]ot every creditor-debtor relationship attended by a degree of personal interaction between the parties rises to the level of an insider relationship." *See In re Friedman,* 126 B.R. 63, 70 (9th Cir B.A.P. 1991). It is unlikely that Congress intended that relationships that have existed over a period of time, attended by some personal involvement but ***without control by the creditor over the debtor's business,*** would subject such creditor to insider status. *See generally, Id. (emphasis added); See also, Entr. Acquisition,* 319 B.R. at 633 (noting that the test for non-statutory insiders "requires some showing of control of the debtor.") The Court in *In re Mcorp Financial, Inc.,* 137 B.R. at 232, held that although the purchaser of an insider claim had a bias, that did not rise to the level necessary for the court to find that it was an insider.

To be sure, cases within the Ninth Circuit have used the word "affinity" when describing suspect transactions. *See In re Bella Vista by Paramount, LLC,* 2011 WL 3303258, at *5 (9th Cir B.A.P. Mar. 11, 2011). The Court in *In re Friedman,* 126 B.R. at 69-70, appears to have borrowed the word "affinity" from Bankruptcy Code § 101(39), which defines "relatives." Affinity is regarded as the connection existing in consequence of marriage between each of the married persons and the kindred of

the other." *In re Winn*, 127 B.R. 697, 699 (Bankr. N.C. Fla. 1991). In this context, there must be a relationship that shows much more than a "liking" for the debtor - it must be more like a marital relationship. *In re Reinbold*, 182 B.R. 244 (D.S.D. 1995).

Robert Rabkin and Kathie Bartlett are friends. *See Robert Rabkin Deposition Transcript; See also, Kathie Bartlett Deposition Transcript, p. 56.* They do have a relationship, but it does not rise to the level of "affinity." Robert Rabkin and Kathie Bartlett met when Kathie Bartlett was showing him potential homes to purchase, she was acting as his real estate agent at the time. *Id.* Their friendship has grown from there.

As expressed in both Dr. Rabkin's and Ms. Bartlett's depositions, Robert Rabkin does not know any other member, or any other managing member of MBP Equity Partners. *Robert Rabkin Deposition Transcript, p. 40; Kathie Bartlett Deposition Transcript, p. 56.* Accordingly, Dr. Rabkin has no control over the Debtor. After all, how could he. U.S. Bank has not met its burden of proof that Robert Rabkin even has control over Kathie Bartlett, much less the other members of MBP Equity Partners. Kathie Bartlett is just one of five managing members of MBP Equity Partners, and those managing members answer to all of the other members.

U.S. Bank tries to make much over the fact that Dr. Rabkin did not engage in significant due diligence before purchasing the claim. Dr. Rabkin is financially secure and $5,000.00 is not a very big investment for him.

See Declaration of Robert Rabkin; See Robert Rabkin Deposition Transcript. Further, Robert was aware of the building, as he lives in the area, and he did conduct a cite visit. *Robert Rabkin Deposition Transcript*, p. 29. At his deposition Dr. Rabkin stated that he was sure that he had asked Kathie Bartlett some questions regarding the claim, but he could not remember at the time of the deposition the specifics of the questions that he had asked. *Id.* at 64.

Dr. Rabkin purchased this claim as a business investment, U.S. Bank has provided no evidence, other than Robert's refusal to accept U.S. Bank's offer to purchase Dr. Rabkin's claim, that this was anything but an arms-length transaction. Dr. Rabkin was insulted and offended by U.S. Bank's badgering offer to purchase his claim during the course of his deposition. He felt "browbeaten" by U.S. Bank's over reaching actions. *See Declaration of Robert Rabkin.* Dr. Rabkin's refusal to sell his claim to U.S. Bank shows nothing more than a distaste for U.S. Bank and its counsel. Dr. Rabkin is 67 years old, is an ex-surgeon and is financially secure. *Id.* Dr. Rabkin is certain that he is not under any obligation to sell his claim to U.S. Bank, regardless of whatever offer it makes. *Id.* Dr. Rabkin is hopeful that the local business which is owned by local people will be able to reorganize. There is nothing inappropriate about that.

CONCLUSION

For the foregoing reasons, the Debtor requests that this Court refuse to designate the vote of Robert Rabkin, and that this Court allow Robert Rabkin to vote on the Debtor's plan of reorganization.

DATED this 13th day of July, 2012.

LAW OFFICES OF ALAN R. SMITH
By: */s/ Alan R. Smith*
ALAN R. SMITH, ESQ.
Attorney for Debtor

[EXHIBIT A INTENTIONALLY OMITTED]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

Case No. BK-N-11-51994-BTB

Chapter 11

In Re:

THE VILLAGE AT LAKERIDGE, LLC,
A NEVADA LIMITED LIABILITY COMPANY,

Debtor.

CERTIFICATE OF ACCEPTANCE AND REJECTION OF CHAPTER 11 PLAN [BALLOT SUMMARY]

Hearing Date: August 1, 2012
Hearing Time: 10:00 a.m.

Debtor, THE VILLAGE AT LAKERIDGE, LLC, a Nevada limited liability company, by and through its counsel, Alan R. Smith, Esq., of the Law Offices of Alan R. Smith, hereby files its certificate that ballots concerning the Debtor's Plan of Reorganization **(Dkt. #48)** as amended by the Debtor's Second Amendment To Debtor's Plan Of Reorganization **(Dkt. #109)**, have been received as follows:

Creditor	Class	Amount	Vote
U.S. Bank	1	$21,860,052.37	Rejects

TOTAL CREDITORS VOTING:	1
PERCENTAGE IN NUMBER ACCEPTING:	0%
PERCENTAGE IN DOLLAR AMOUNT ACCEPTING:	0%

Robert A. Rabkin	3	$ 2,761,000.00	Accepts

TOTAL CREDITORS VOTING:	1
PERCENTAGE IN NUMBER ACCEPTING:	100%
PERCENT AGE IN DOLLAR AMOUNT ACCEPTING:	100%

The Debtor is unaware of any other ballots.

Copies of the Ballots are collectively attached hereto as **Exhibit "A."** The original ballots are in the possession of Debtor's counsel, and are available for inspection and review by the Court and any interested party.

DATED this 30th day of July, 2012.

LAW OFFICES OF ALAN R. SMITH

By: */s/ Alan R. Smith*
ALAN R. SMITH, ESQ.
Attorney for Debtor

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

Case No. BK-N-11-51994-BTB
Chapter 11

In Re:

THE VILLAGE AT LAKERIDGE, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Debtor.

BALLOT FOR ACCEPTING OR REJECTING DEBTOR'S PLAN OF REORGANIZATION

Hearing Date: August 1, 2012
Hearing Time: 10:00 a.m.

The Plan of Reorganization referred to in this ballot can be confirmed by the Court only if two-thirds in amount and more than one-half in number of creditors in each class of interest voting on the Plan accept the Plan, or, in the event of a rejection, the Court finds that the Plan nonetheless conforms to the requirements of the law. See 11 U.S.C. § 1129.

This ballot must be returned by mail, fax or email no later than **5:00 p.m. July 27, 2012**, to:

Alan R. Smith, Esq.
Law Offices of Alan R. Smith
505 Ridge Street
Reno, Nevada 89501
Facsimile Number: (775) 786-3066;
email: mail@asmithlaw.com

The undersigned acknowledges receipt of the Plan of Reorganization and votes as follows:

		[Check One Box]
Class of Creditor:	Secured	Accepts (___)
Amount of Claim:	$ 21,860,052.37	Rejects (XX)
Name of Creditor:	U.S. Bank National Association as Trustee as successor-in-internal to Bank of America, N.A., as Trustee, as successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Greenwich Capital Commercial Funding Corp., Commercial Mortgage Trust 2005-GG3, Commercial Mortgage Pass Through Certificates, Series 2005-GG3, by and through, CWCapital Asset Management LLC, solely in its capacity as Special Servicer, c/o CWCapital Asset Management, 7501 Wisconsin Avenue, Suite 500W, Bethesda, MD 20814	
Address:		

By: Benjamin C. Miller

Title: Vice President, CWCapital Asset Management, LLC
Solely in its capacity as Special servicer to the Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

Case No. BK-N-11-51994-BTB
Chapter 11

In Re:

THE VILLAGE AT LAKERIDGE, LLC,
A NEVADA LIMITED LIABILITY COMPANY,

Debtor.

BALLOT FOR ACCEPTING OR REJECTING DEBTOR'S PLAN OF REORGANIZATION

Hearing Date: August 1, 2012
Hearing Time: 10:00 a.m.

The Plan of Reorganization referred to in this ballot can be confirmed by the Court only if two-thirds in amount and more than one-half in number of creditors in each class of interest voting on the Plan accept the Plan, or, in the event of a rejection, the Court finds that the Plan nonetheless conforms to the requirements of the law. See 11 U.S.C. § 1129.

This ballot must be returned by mail, fax or email no later than **5:00 p.m. July 27, 2012**, to:

Alan R. Smith, Esq.
Law Offices of Alan R. Smith
505 Ridge Street
Reno, Nevada 89501
Facsimile Number: (775) 786-3066;
email: mail@asmithlaw.com

The undersigned acknowledges receipt of the Plan of Reorganization and votes as follows:

		[Check One Box]
Class of Creditor:	Unsecured	Accepts (✓)
Amount of Claim:	$ 2,761,000	Rejects ( )
Name of Creditor:	Robert A. Rabkin	
Address:	4790 Caughlin Pkwy #375	
By:	Reno, NV, 89519	
Title:	Robert A. Rabkin	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

11-51994-btb

In re:
THE VILLAGE AT LAKERIDGE, LLC CH: 11

DOC# 194 APPLICATION U.S. BANK'S MOTION TO (A) DESIGNATE CLAIM OF ROBERT RABKIN AS AN INSIDER CLAIM OR (B) DISALLOW SUCH CLAIM FOR VOTING PURPOSES PURSUANT TO 11 U.S.C. 1126(E), 1129(A) AND 105(A) FILED BY LOUIS M. BUBALA III ON BEHALF OF U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION

11-51994-btb

In re:
THE VILLAGE AT LAKERIDGE, LLC CH: 11

DOC# 169 SECOND APPLICATION FOR COMPENSATION TO COLLIERS INTERNATIONAL FOR THE VILLAGE AT LAKERIDGE, LLC, FEES: 3,215.70, EXPENSES: 0.00. FILED BY ALAN R SMITH

11-51994-btb

In re:
THE VILLAGE AT LAKERIDGE, LLC CH: 11

DOC# 26 MOTION FOR RELIEF FROM STAY PROPERTY: VILLAGE AT LAKERIDGE, MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO FORECLOSE ON DEBTOR'S PROPERTY FEE AMOUNT $150, WITH CERTIFICATE OF SERVICE FILED BY JANET L. CHUBB ON BEHALF OF U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION

11-51994-btb

In re:
THE VILLAGE AT LAKERIDGE, LLC CH: 11

DOC# 86 AMENDED OBJECTION TO CLAIM 1 OF U.S. BANK AS SUCCESSOR TO GREENWICH CAPITAL IN THE AMOUNT OF 22,124,173.37 FILED BY ALAN R SMITH ON BEHALF OF THE VILLAGE AT LAKERIDGE, LLC

U.S. Bankruptcy Court
300 Booth Street
Reno, Nevada 89509-1300

August 1, 2012
10:15 a.m.

BEFORE THE HONORABLE
BRUCE T. BEESLEY, Judge

* * *

[9]ROBERT ALAN RABKIN, WITNESS, SWORN

THE COURT: And could you please step up here and take the witness stand.

DIRECT EXAMINATION

BY MR. SMITH:

Q Will you state your name for the record please?

A Robert Alan Rabkin.

Q And Mr. Rabkin, what is your professional --

THE COURT: Dr. Rabkin.

BY MR. SMITH:

Q Dr. Rabkin, what is your professional background? I apologize.

A I'm a --

THE COURT: We're big on titles here.

THE WITNESS: I'm a surgeon.

[10]BY MR. SMITH:

Q How long were you a surgeon?

A I was in private practice from 1977 until I retired in 2007. 30 years.

Q And what type of surgeon were you?

A I did -- for the last half of my career, I was specializing in laparoscopic surgery and bariatric surgery.

Q Okay. And you're currently retired?

A Yes.

Q Do you know Kathy Bartlett?

A Yes, I do.

Q Okay. And what are the -- well how do you know Kathy Bartlett?

A Well, I met --

THE COURT: Please refer to her as Ms. Bartlett.

BY MR. SMITH:

Q Ms. Bartlett. How do you know Ms. Bartlett?

A I met her in the process when I was looking for a home here in Reno.

Q And approximately when was that?

A It was about two years ago.

Q Okay. And since that time what has your relationship been with Ms. Bartlett?

A We're friends.

Q Okay. Anything more than friends? Do you socialize?

[11]A We socialize, yes.

Q Okay. Do you occasionally have dinner together?

A Yes.

Q Okay. Did there come a time when you were approached by Ms. Bartlett about potentially purchasing a claim against this Debtor, Village at Lakeridge?

A Yes.

Q Do you recall when that was?

A I believe it was last fall.

Q Okay. And what was your initial response when you were approached?

A Well, I wasn't sure -- I had to think about it.

Q Okay. And did you think about it?

A Yes, I did.

Q Did you have any subsequent meetings with Ms. Bartlett about the purchase of the claim?

A There were no meetings that were specific for that purpose. I think that we probably discussed it briefly several times.

Q Over the course of what period of time?

A Probably a month or two. Maybe more.

Q Okay. Had you ever done such a thing before, purchased a claim in a bankruptcy case?

A No.

Q Okay. And during this period of time, did you conduct any [12]investigation concerning this Debtor, the Village at Lakeridge? When I say Debtor, do you know what I mean? Debtor is a term that we use in bankruptcy and in this case it means the Village at Lakeridge which is the entity that you have the claim against. So did you do any investigation of the Debtor in this case prior to purchasing

the claim?

A I think the answer is no. I don't -- the Debtor being the entity that owns the property --

Q Okay.

A -- is that what you mean?

Q Correct.

A I may have seen -- well I walked through the property if that's what you mean.

Q Okay. Prior to purchasing the claim?

A Yes.

Q Is there anything else that you looked at prior to purchasing the claim?

A It's possible that I at one point saw a rent roll. I don't have any recollection of what was in it. And I certainly didn't -- never received a copy.

Q Do you know what the claim amount is that you purchased?

A 2.761 million.

Q Okay. And how much did you pay for the purchase of that claim?

A $5,000.

[13]Q Now --

THE COURT: So it was a bit speculative?

THE WITNESS: I'm sorry.

THE COURT: Some speculation going on there?

THE WITNESS: Yes. Yes, Your Honor.

BY MR. SMITH:

Q How did you arrive at that price of $5,000, Dr. Rabkin?

A I don't believe that it was -- the number I believe was mentioned to me that the claim was going to be sold for that amount of money.

Q Okay. And you said that the only investigation you did was walk the property and maybe look at a rent roll. Is there a reason why you didn't conduct any further investigation prior to making this purchase?

A Well, I think this was too -- this was very speculative. I didn't want to invest -- in order to get -- I think in all honesty due diligence would have been very expensive. And I thought that there seemed to be a possibility that I would get a reasonable return on my investment. But putting a lot of money into it just didn't make sense.

Q Did you understand that there's a possibility you would get no return on your investment?

A Certainly.

Q Now at the time and in connection with your conversations with Ms. Bartlett, were you ever asked to vote in favor of the [14]Debtor's plan?

A No.

Q Do you know what I'm talking about when I say the Debtor's plan?

A I do now. I didn't then.

Q Okay. Did you look at the Debtor's plan prior to your purchase of the claim?

A No.

Q Okay. Were you ever told that your vote on the plan might be necessary to get the plan confirmed?

A Not until recently.

Q Okay. And recently meaning when?

A Well, I had my deposition and I think in the process of understanding what the deposition was about.

Q Were you ever promised that you would by anyone, Kathy Bartlett or anyone else, that you would get your money back? Your $5,000?

A No.

Q And was it actually your money that you used to purchase the claim?

A Yes.

Q Okay. In other words, you didn't borrow it from Kathy Bartlett or I'm sorry Ms. Bartlett or anyone else?

A No.

Q Okay. And do you have any side agreement with anyone [15]including Ms. Bartlett concerning this claim?

A No.

Q In other words, that you get maybe something else or some other advantage other than just your rights as a claim holder?

A I do not.

Q Okay. And at this point, do you expect a return on your investment?

A I don't know how to answer that. It seems like there's -- the more I know about it, the more questions I have.

Q Okay.

A Do I expect a return? I'm hoping for a return.

Q And what are the questions you have now that you know more about it?

A The process. The whole process is much more involved than I appreciated.

Q Okay. And as a result of that, have you hired an attorney?

A Yes.

Q And you hired Mr. Hartman, correct?

A Correct.

Q Now I just want to ask you a couple other questions about your relationship with Ms. Bartlett. Not in any great detail but is your relationship with Ms. Bartlett such that if she asked you to do something such as vote in favor of the plan, would you just do it?

[16]A No, absolutely not.

Q Is that with regard to investments, I mean are you – do you make your own decision in that regard?

A We have no --

Q No, no, you personally I'm talking about.

A Do I make my own decisions?

Q Yes.

A Yes.

Q Okay. And you've made other than purchasing claims, have you made other investments in your lifetime?

A I have.

Q Okay. After you purchased the claim, and I'm not sure. Let's go back and do you know what date that purchase was consummated? I mean we can look at the documents but if you recall.

A I believe it was at the end of October.

Q Okay. After the time that you purchased the claim -- by the way, were there any representations by Ms. Bartlett that the decision to sell the claim had to be made by others other than her personally?

A No.

Q But did you believe that she had the decision making power to sell the claim or not?

A No.

Q Okay. Were you ever advised that there were other members [17]of the group that had to participate in the decision making process?

A I understand that that's the case.

Q Okay.

THE COURT: I'm sorry. I didn't follow this. You understand that's the case now. Did you understand it at the time you purchased the claim?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay.

BY MR. SMITH:

Q So your answer is both or now? Both?

A The question is did I understand that there was a group --

Q Correct.

A -- involved? Yes, I did.

Q Okay.

A Sorry.

Q Now since you purchased the claim, have you had any further discussions with Ms. Bartlett concerning the claim and just any aspect related thereto like the bankruptcy?

A Yes.

Q Okay. And when did those discussions occur?

A We've had discussions -- I had a deposition in the beginning of June.

Q Okay.

A And she is aware that I had the deposition. If that's [18] what you mean.

Q Well, I was more asking about whether there were discussions about how you would be treated under the plan or whether you would vote in favor of the plan. Did that issue come up in discussions with Ms. Bartlett?

A How I would be treated under the plan?

Q Correct.

A Yes, after the deposition, yes.

Q Okay. So that's something that's more recently that has occurred?

A Yes.

Q Approximately when did those discussions begin about what your treatment would be under the plan?

A It was last week.

Q Okay. Between the time of purchasing the plan and last week, did you have any discussions about how you would be treated under the plan with Ms. Bartlett?

A No.

Q Okay. Why did that come up last week?

A What happened at my deposition is that the attorney who was deposing me offered to buy my claim. Buy the claim that I own. And for a substantial amount of money.

Q How much?

A And -- well it was structured as $50,000 and then if I were to agree on the spot, the total would have been $60,000.

[19]Okay. And how did that sponsor conversations with Ms. Bartlett?

A Well, I did not -- we did not discuss that because I felt that it was not -- not allowed under the rules. And I think that it's been important to just not have any conversations. However, my understanding last week is that and I'm not an attorney obviously, but that there is a common interest

or community interest or something of that sort which at least in the presence of counsel, that type of we could discuss those issues. We've not had extensive discussions, however.

THE COURT: You have or you have not?

THE WITNESS: We've not.

THE COURT: Thank you.

BY MR. SMITH:

Q Now are you talking about discussions that occurred after you employed Mr. Hartman as your attorney?

A Yes.

Q And without getting into the substance of those, was one of your concerns about your treatment under the plan?

A Yes.

Q And what is your concern?

A Well, I didn't really expect to be investing a lot of money in this. And I thought that my outlay would be somewhere on the order of 5,000 give or take. And it looks like there are going to be a lot more expenses. So I felt that -- and that was [20]one factor. It was going to cost more for me to be involved and secondly, if the attorneys for the bank were willing to purchase it for $60,000, I would have thought that the minimum value is worth at least that.

Q Now you -- the offer to purchase your claim occurred during your deposition, as you said?

A That's correct.

Q And how did you respond in your deposition?

A I responded by saying that I would consider it.

Q Okay. Did you have any personal reaction to, you know, the way it was put to you at the deposition?

A I was appalled really. I just -- I thought that the entire situation was asymmetric. I was under oath, the deposition and I was being put on the spot. In fact, it seemed to me that after a couple hours of asking the same question over and over again, the other attorney came with -- put a check in my hand and said here, take this and I won't bother you anymore. And if you don't take it, I'm going to keep bothering you.

THE COURT: He actually said that?

THE WITNESS: No, Your Honor, but the implication was that -- yes, he did. Well, he said it in more or less he said you just take this money, you're done and if you don't take it, then there's a likelihood that you won't get anything. And that we're going to keep -- and then he continued to badger me.

[21]THE COURT: On behalf of the legal profession, I apologize. That's inappropriate.

THE WITNESS: Thank you, Your Honor.

MR. OWENS: Excuse me, Your Honor, I know we'll have an opportunity to respond to this, but if you read the transcript, that's not exactly -- that's not what happened at all. But the Court can have an opportunity --

THE COURT: You'll have a chance.

MR. OWENS: Thank you.

THE COURT: Were you the person questioning?

MR. OWENS: I was and so I --

THE COURT: Well, I did read the transcript and I thought your conduct was appalling as well. So don't be doing that again in a case in front of me. That's enough.

MR. OWENS: If Mr. Rabkin's offended, I do apologize to Mr. Rabkin.

THE COURT: Dr. Rabkin.

MR. OWENS: Dr. Rabkin.

THE WITNESS: Thank you.

MR. OWENS: But I will tell you under the Ninth Circuit authority it's appropriate for lenders to purchase claims and I didn't think there was anything --

THE COURT: Yeah, but not during the course of a deposition where you have somebody under oath. I think your conduct was bad. I don't know that it's sanctionable but I [22]thought it was offensive. And I did read the depo. Go ahead, Mr. Smith.

BY MR. SMITH:

Q And Dr. Rabkin, ultimately how have you responded -- have you made a final response to the bank's offer to purchase your claim for 60,000 -- well it was 50 and then 60?

A I did not respond within the time limit. So my expectation is that that -- I allowed that to expire.

Q Okay. Now backing up again to your relationship to Ms. Bartlett, do you and Ms. Bartlett, do you share any bank accounts?

A No.

Q Okay. Do you share -- do you live together?

A No.

Q Do you share any expenses or anything like that?

A No.

Q Do you loan each other money?

A No.

Q Okay. Do you know any of the member -- well, first of all, do you know -- I'm going to ask you some questions about MBPEP-1. I'll probably just shorten it to say MBP. So you know what I mean when I say MBP?

A Yes.

Q Okay. And that's the entity that the claim was purchased from?

[23]A Yes.

Q Do you know any of the members of MBP?

A No.

Q Have you ever met them?

A I met them on one occasion which I believe was -- well, I don't know exactly when it was, but it was in your office.

Q Was that the only occasion that you met the members of the MBP?

A Yes, that was the only occasion and there were only a couple present.

Q Okay. Have you had any prior relationship whatsoever with any of the members of MBP?

A No, I have not.

Q Okay. In your own words, just explain in your own words why you purchased this claim?

A Well, it seemed like there was -- the face value was really high. It seemed like there was an opportunity to have a return on my investment basically.

MR. SMITH: Okay. Your Honor, that's all I have on direct. Thank you.

THE COURT: Okay, cross.

MR. WHITWELL: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. WHITWELL:

Q Good morning, Dr. Rabkin.

[24]A Good morning.

Q Dr. Rabkin, I just want to follow up on a couple of things that you testified to already. At the time that you purchased the claim, you had not looked at anything -- any documents of any kind in connection with that claim other than possibly a rent roll and you had -- that was the only document, possibly a rent roll, is that correct?

A Yes, I'm saying that, yes. The timing is -- it was somewhere around that time.

Q And you didn't receive a copy of that rent roll, correct?

A No, I did not.

Q And you also walked the property, correct?

A I walked in the property and walked around, yes.

Q Other than that, is the only information that you had with respect to the investment the information you got in your conversations with Kathy Bartlett?

THE COURT: Please refer to her as Ms. Bartlett.

MR. WHITWELL: Thank you, Your Honor, I will.

THE WITNESS: I'm sorry. The only information?

BY MR. WHITWELL:

Q In terms of the claim that you were purchasing --

A Yes.

Q -- the only information that you had prior to purchasing the claim was information you had obtained from your conversations with Ms. Bartlett, the possibly reviewing the [25]rent roll and physically looking at the property, is that correct?

A At that time.

Q At the time you purchased.

A Yes, at that time, yes.

Q Okay. And Ms. Bartlett did not give you any information regarding either your potential -- your likely or potential recovery on the claim, correct?

A Correct.

Q So you made an investment and it was for investment purposes meaning to hopefully make a profit on your investment, correct?

A Yes.

Q And you made that investment without any information whatsoever regarding either the potential or the likely return on that investment, is that fair?

A I told you the information that I have. I guess the answer is yes.

Q And is it your investment practice normally to make investments without having any information regarding either the likely or even potential return on that investment?

A Well, sometimes I make an investment based on a recommendation. Sometimes a broker would call me in the past. I don't do that anymore. But --

Q And when you've done that in the past, was the broker [26]essentially saying that this is an investment that

at least the broker believed had a good opportunity to increase in value?

A Well, certainly.

Q And Ms. Bartlett didn't make any such statement to you, correct, with respect to this investment? That this was an investment that was likely to return a profit in the future, did she?

A She believed that the indication I had was that there was a possibility of making a profit, yes.

Q And what did she -- did she give you any specifics with respect to that as to how much or how you'd make a profit? Anything at all in terms of you can recall?

A No, I think a fair return was what I expected.

Q And what did you at that time consider to be a fair return?

A More than I put into it.

Q Did you have anything in mind in terms of a percentage increase, ten percent, fifty, a hundred? Something like that?

A No, I did not.

Q And did you have any information with respect to what percentage return you might recover on this investment?

A No, my understanding of investing is that the best policy is to diversify and some investments will fail and some will have a big return. And so this was certainly not -- this is what I would have -- this is what I consider an uncorrelated [27]asset. You know, if you look at the grand scheme of events, this is something that might really be good, might not.

Q Well, and I just want to understand what information you had that led you to believe that it might be really good.

MR. HARTMAN: I object, Your Honor, he's already asked the question. Dr. Rabkin has answered it more than once.

THE COURT: Sustained.

BY MR. WHITWELL:

Q You had never purchased a claim in bankruptcy before, correct?

A Correct.

Q So is it fair to say that you had no familiarity with this particular type of investment prior to making the purchase of this claim?

A Correct.

Q Now I'm not going to ask you any additional questions with respect to your relationship with Ms. Bartlett except

for one. Is your relationship with Ms. Bartlett and was -- I'll break them up. At the time that you purchased the claim, did you have a romantic relationship with Ms. Bartlett?

MR. HARTMAN: I object, Your Honor, that's vague and I don't think it's relevant at all.

THE COURT: Well, I think he testified in his deposition that he did.

MR. HARTMAN: Okay.

[28]THE COURT: You may answer, Doctor.

THE WITNESS: Yes.

BY MR. WHITWELL:

Q And do you still have a romantic relationship with

Ms. Bartlett?

A Yes.

Q I was asking you just over the last few questions about what information you had in terms of documents and things like that but just to clarify, you also had no information with respect to the bankruptcy proceedings that had occurred at the time that you purchased your claim, correct?

A Correct.

Q And you've never received schedules or other documents relating to the ongoing proceedings in the bankruptcy until very recently reviewing the plan, is that correct?

A I received documents very recently but at the time, you're correct, I did not have any documents.

Q And even after the initial purchase, you did not ask to start receiving regularly the documents that a creditor might normally receive in connection with a bankruptcy proceeding?

A That's correct.

Q How did it come about that you very recently looked at some documents with respect to the bankruptcy proceeding?

A I received a deposition and with that, there were some documents.

[29]Q So it was in connection with your preparation for that deposition?

A Correct.

Q And after your deposition until -- well let me ask a question before that. You recently voted on approval of the Debtor's plan of reorganization, correct?

A Correct.

Q And you voted in favor of that plan of reorganization, correct?

A Correct.

Q Did you have an understanding at least at the time that you voted what you would receive on your claim if the plan of reorganization is approved by the Court?

A My understanding -- my vote was submitted after discussion with my attorney and with the understanding that the amount that I would be -- that I would receive would be amended.

Q I'm not sure if I followed but let me just ask it again. Do you understand -- do you have an understanding with respect to the dollar amount that you will be paid on your claim if the Debtor's plan of reorganization is approved?

A My understanding is that the plan will be amended and that this will be or that I'm hoping that it will be amended.

Q Okay. Do you have an understanding that if it's as you described amended, how much you'd be receiving on your claim?

A I don't know that amount.

[30] So even as you sit here today, you don't have any number in mind that you think you're going to be paid on this claim, is that correct?

A My understanding is that the plan will be amended -- my understanding was that the plan had been amended but apparently had not been. The initial plan was for $5,000 to be paid each quarter for three years. At this point, I believe that there is another amendment which provides for $30,000 lump sum payment. However, having looked at all that, my vote was submitted with the understanding that certainly with all the legal expenses and everything, I'm going to have a lot more invested here. And with the offer by the bank that my claim had a value that was much more than $30,000, my understanding is that the plan will be amended. That it doesn't have -- it will not be submitted until the end of September. And that's what I'm hoping for.

Q And that if that process takes place, that you'll receive an amount under this potential amendment that's in excess of the 30,000?

A Yes.

Q And that was your understanding at the time that you voted in favor of the plan of reorganization that's currently pending?

A Yes.

Q You said something in your direct examination and I just [31]want to make sure I understood it. You made a comment with respect to the offer that you didn't think it was allowed, something to that effect and I just want to clarify. You did understand that you were allowed if you had chosen to to accept the offer and accept the 60 or $50,000 payment for your claim, is that correct?

A Yes.

Q Okay. And nevertheless, you did choose to turn down that 60 and then later $50,000 offer?

THE COURT: I think you have that backwards.

MR. WHITWELL: Well, it was 50 -- let me just clarify.

BY MR. WHITWELL:

Q The initial statement at the deposition was 50,000, correct?

A Yes.

Q And then you were told that if you would accept the offer that day, you'd be paid 60,000, correct?

A Yes.

Q And then when you said no, that you wanted to consider it, you were told that you had a certain number of days to accept the offer but it would have been at the $50,000 amount, correct?

A Yes.

Q Okay. And after -- well basically you rejected that offer [32]by allowing the number of days that you'd been given to consider it and to expire and thereby made a decision effectively to reject that offer?

A Yes.

Q And throughout this period, both the time that you purchased the claim and all the way up to sitting here today, your only motivation in purchasing this claim was as an investment and to make money on the investment, is that correct?

A Well, I think that there is some value in having this -- having local ownership of this property. I also feel that I'm proud of the community. But I also would hope to make some profit on it, yes.

Q Those factors that you just mentioned with respect to local ownership, et cetera, those were not factors that went into your initial decision to purchase the claim, correct?

A Correct.

Q Because you weren't aware of the bankruptcy or the effect of any of this on local ownership or anything like that, correct?

A Yes, that's correct.

* * *

[33]THE COURT: I have a couple questions to kind of fill out some of my questions. In looking at the cases that involve whether a person is an insider or not an insider, there's a number of other questions that came up which I'd like you to answer for me please. Does Ms. Bartlett use your credit cards?

THE WITNESS: No, Your Honor.

THE COURT: Do you use hers?

THE WITNESS: No, Your Honor.

THE COURT: Have you purchased any significant items for her such as an automobile or something like that?

THE WITNESS: No, Your Honor.

THE COURT: Do you provide her with a vehicle or anything like that?

THE WITNESS: No, Your Honor.

THE COURT: Okay. Is a $5,000 investment a significant investment in your opinion?

THE WITNESS: In terms of my overall net worth, it is not.

THE COURT: Okay. I have nothing. Does anybody want to cross with respect to those questions?

* * *

[34]THE COURT: Next witness.

MR. SMITH: I call Kathy Bartlett.

THE COURT: Ms. Bartlett, would you please step forward and be sworn.

THE CLERK: Please raise your right hand.

KATHLEEN SKYLER BARTLETT,
WITNESS, SWORN

DIRECT EXAMINATION

BY MR. SMITH:

Q And Ms. Bartlett, state your name please for the record?

A Kathleen Skyler Bartlett.

Q Ms. Bartlett, what do you do for a living?

A I'm a realtor with Dixon Realty.

Q And how long have you been doing that?

A A little more than eight years.

Q Okay. Do you have a relationship with MBPEP-1?

A I do.

Q What's your relationship?

A I'm an investor through my late husband's 401(k).

Q And if -- I'm just going to refer to it as MBP. Do you understand what I mean when I say that? Is MBP a limited liability company?

A Yes.

Q Are there other members?

A There are.

Q How many?

A Approximately 12 in different -- a couple of people have invested through perhaps two different mechanisms. Maybe retirement accounts for example.

Q And with respect to -- first of all, what's the relationship between MBP and the Debtor, Village at Lakeridge?

A The Village -- MBPEP has one asset which is the Village at Lakeridge.

Q Okay. And when it comes to making decisions for MBP, how are those done?

A There is a board of managers of which I am one.

Q Okay. How many others?

A Four.

Q Okay.

A And we have a certain amount of authority and major decisions are made by the full investor group.

Q Do you have ability to make decisions on your own [36] individually?

A I do not.

Q Okay. And you've heard the testimony about the sale of the claim, MBP's claim. Who made the decision to sell that claim?

A The investor group.

Q Was there an actual meeting held at which that was discussed?

A Yeah.

Q And voted upon?

A There was a meeting of the board of managers and the vote was made I believe via email.

Q Okay.

A And phone calls.

Q Why was the decision made to sell the claim?

A The claim was -- we knew we couldn't vote that claim ourselves. It wasn't really worth anything to us. At some point last year, it was suggested by somebody and I can't recall who, that there may be a tax advantage in selling that claim. So we decided to sell it.

Q Were those issues considered by all the member -- or the managing members at the time of the meeting?

A Yes.

Q At the time you made the decision, by you I just mean your group, did you also discuss who you might sell that claim to?

[37]A There were -- yes, at one point there were different names of potential buyers put on the table and after some discussion, I agreed to talk to Dr. Rabkin about it.

Q And did you in fact talk to Dr. Rabkin?

A I did.

Q Okay. And when was that? Do you recall when you first approached him?

A It was last fall. It may have been September initially. And we had -- at first he was intrigued by the idea. I know he went and walked the property. I know I shared a rent roll with him. And then he made the decision to buy the claim I believe mid-October.

Q So between --

A I think it was around October 17th.

Q Okay. So between your initial meeting with Dr. Rabkin and his ultimate decision, was the issue of purchasing the

claim discussed between yourself and him? In other words, more than one occasion?

A Prior to him purchasing it?

Q Between the time when you initially brought it up to him and the time when he actually bought it, did you have discussions in between those two periods?

A We did.

Q Okay.

A I mean general discussions about the nature of the [38] property.

Q Okay. And do you recall what you told him? What you represented to him?

A I think we may have had discussions about the tenants in the property. I remember sharing a rent roll with him and talking about tenants and tenant prospects.

Q Okay. Do you recall anything else of what you told him? Did you tell him anything about the bankruptcy case?

A Well, he knew we were in bankruptcy. But no, not beyond that.

Q Now in any of your discussions with Dr. Rabkin, did you discuss what he would receive in the bankruptcy case?

A Not beyond the idea that he could make money on his investment. But we also talked about the possibility that he may not get anything.

Q Did you at all discuss whether he would vote in favor of the Debtor's plan?

A No, no.

Q You got to wait for me to finish the question. Thank you. Did you ever discuss with him that his vote would be needed in order to confirm the Debtor's plan?

A No.

Q Did you give Dr. Rabkin a copy of the plan of reorganization?

A No.

[39]Q Have you ever given him a copy of the plan?

A No.

Q Okay. Has he ever asked your opinion prior to voting on whether or not he should vote in favor of the plan?

A We did not discuss the bankruptcy except an occasional comment about how we weren't discussion the bankruptcy. Until last Friday.

Q Okay. And what happened last Friday?

A I received a phone call from Dr. Rabkin in the morning. I had a very full workday and he told me that he had to submit his ballot either accepting or rejecting the bankruptcy plan by the end of the day. And I told him that I didn't know anything about that. He said and that I didn't think we should discuss it. And he said he had been in communication with your office and that we needed to talk about it, that it was okay to discuss it. And so we made arrangements or made a plan to meet at the end of the day and talk about it.

Q And did you in fact do that?

A We did.

Q What did you talk about?

A He explained to me that he felt that he wanted more money. He was incurring legal fees that he hadn't anticipated. And I think there was a comment about the banks being paid back over ten years and I explained that I couldn't make any decisions on behalf of the [40]group. That that was a decision that would have to be taken to the full group of investors.

Q Is that a matter that you do intend to take to the full group of investors?

A Yes.

Q And do you understand that his vote now is dependent upon some modification to the plan?

A That's what I've been told.

Q All right. Now with regard to your relationship with Mr. -- with Dr. Rabkin, how long have you known him?

A Approximately two years.

Q And you heard his testimony that you met in connection with a home sale. Do you agree with that?

A Yes, he came to look at a property that I had listed and later asked me to represent him in his search for a home in Reno. He was living in Incline Village at the time.

Q And at some point then thereafter you dated, is that correct?

A Yes.

Q Okay. And you're still -- you still date?

A Yes.

Q Okay. And I think the term has been a romantic relationship -- you have a romantic relationship?

A I guess.

Q Why do you say I guess?

[41]A Well, no -- yes.

Q Okay. Do you -- have you loaned any money to Dr. Rabkin?

A No.

Q Has he loaned any money to you?

A No.

Q Anticipating the Judge may have similar questions, do you have a -- do you share a credit card in any way?

A No.

Q Has he given you any gifts of significance?

A No.

Q Have you given him any gifts of significance?

A No.

Q Okay. Are your finances in any way intertwined?

A No.

Q All right.

A We date and we share expenses equally.

Q Do you live together?

A No.

Q Now other than the sale of the claim, the MBP claim, to Dr. Rabkin, was there any other agreement with Dr. Rabkin made?

A No.

Q Okay. For example, was there ever a guarantee made by you that he would get his money back?

A No.

Q Okay. Was there any promise to him that he would receive [42]anything?

A No.

* * *

CROSS EXAMINATION

BY MR. WHITWELL:

Q Ms. Bartlett, just a very few questions following up on some of the things you said. I believe that you testified that in connection with the considerations to sell the claim, that the group understood that you could not vote the claim, correct?

A The understanding of the group was that the claim because we've gone into bankruptcy had no value to us.

Q And I understand that and I just wanted to follow up though on the part of that answer before where you said that we could not vote the claim. Do you recall testifying to that a few minutes ago?

A Yes.

Q And what you were referring to there was that MBE (sic) could not vote the claim?

A Yes, we had a vague understanding of that at the time.

Q And did you understand that or believe anyway that if the claim was sold to a third party, that that third party could then vote the claim?

[43]A We understood that that was a possibility, yes.

Q And that went into your considerations as to whether to sell the claim, correct?

A Yeah, but I think the discussions at the time focused more on the idea that there may be a tax advantage.

Q So it wasn't the only consideration but it was a consideration, the voting part?

A It was part of our discussions, yes.

Q Okay. You testified that there were discussions amongst your group with respect to several potential purchasers of the claim, is that correct?

A There were a few, yes.

Q The only purchaser that was approached was Dr. Rabkin, correct?

A Correct.

Q And why was that? Why didn't you not approach several potential purchasers to see that you could get the most for the claim possible?

A We talked about different potential buyers and frankly I don't recall how we settled on Dr. Rabkin. But he was around. He was in town. And he seemed like the most viable candidate at the time. I'm sorry, I can't give you any more specifics than that.

Q Fair enough. The group -- did the group discuss the price that they would be asking Dr. Rabkin to pay for the claim.

[44]There was some discussion, yes.

Q And did the group then arrive at the $5,000 price?

A Yes.

Q And you proposed that $5,000 price to Dr. Rabkin, correct?

A I did.

Q Did he suggest that he might be interested but try and get the price any lower than the 5,000?

A No.

Q Okay. Just one last thing. I believe you testified, I just want to make sure I heard it correctly, that it was your understanding after your discussions with Dr. Rabkin recently, that his vote in favor of the plan is dependent on the submission of an amended plan in which he would receive more than the 30,000 called for by the current plan, is that correct?

A That's what I've been told.

* * *

[64]MR. OWENS: -- I'd like to get to the second issue. The second issue is whether Dr. Rabkin is an insider himself.

THE COURT: No, I don't think so. Because I've read the various cases that talked about a non-statutory insider because --

MR. OWENS: Right.

THE COURT: -- of a romantic relationship, and all of them have very much more significant relationships between the parties than was -- than occurred here. So

I really don't think that Dr. Rabkin is a non-statutory insider. I mean, you're not precluded in life from having romantic relationships with people or from having friends. When you have sort of a quasi-marital relationship, those are what the cases seem to do. And that certainly is not the case here.

MR. OWENS: Well, and Your Honor, if I may have an opportunity to at least address these issues?

THE COURT: Sure.

MR. OWENS: The cases look to whether the transaction [65]was an arm's-length transaction. And that's cited from the legislative history directly. There's also a control test that is oftentimes applied, but in -- more in the business sense; that doesn't apply here because it's obvious that Dr. Rabkin doesn't have any control over the Debtor. It's really the latter. It's the relationship between Dr. Rabkin and Ms. Bartlett is what would be indicative of a non-arm's-length transaction.

But I want to make clear that we're not relying simply on their relationship itself. That is just one factor of the totality of circumstances test. And this is sort of a mixed findings of law and fact in terms of the facts are what they are and the application of the facts are conclusions of law or how they're applied.

Here, what are the facts? We have an assignment to Dr. Rabkin for $5,000.00 of a $2.7 million claim only 11 days before the disclosure statement. It so happens that

that claim is necessary to be able to create an impaired assenting class. There are no other creditors other than US Bank.

At his deposition, Dr. Rabkin testified that he was approached by Ms. Bartlett with the proposal to buy the entire claim from MBP and then he paid $5,000.00 for the claim; that's consistent with the testimony here today. Dr. Rabkin didn't recall any of the other material details about the claim or the meetings with Ms. Bartlett. Ms. Bartlett today at this hearing [66]provided some additional information regarding the meetings. But there weren't very many meetings. There were some discussions about selling the claim.

Dr. Rabkin testified that he had not seen or received the Debtor's plan, the disclosure statement, the schedules or the assignment of claim prior to his June 7th deposition. He did not know whether MBP had filed a proof of claim in the bankruptcy case or even whether the claim had been scheduled. He didn't know whether the notice of claims -- assignment of claim had been filed with the Court. And he did testify -- I mean, he's testified that he's an experienced investor, but he had not done any due diligence other than visiting the Debtor's property to determine whether the purchase of the insider claim was a good business investment.

And we query how visiting a property if you're the holder of a claim is really due diligence on the claim itself. What is your likelihood of seeing a return on the investment? But that was the only due diligence that he had done was he had visited the property.

Dr. Rabkin testified that he was not served with any notices of the bankruptcy case. He was unfamiliar with how the Debtor's proposed to treat the insider claim under the Debtor's plan or the amount of the proposed payments to unsecured creditors under the plan. He testified that he had bought the claim as a business investment, and that he had no interest in [67]the Debtor other than getting paid his $30,000.00 on the Rabkin claim. And we cited to that in the deposition transcript on page 85.

He testified that he was concerned that he may run up a lot of expense and get paid nothing. He also testified that if $30,000.00 was the maximum that he would get paid under the plan, that he would be happy to get paid $50,000.00. And we cite to page 86 of the transcript.

Despite this testimony, he did not accept the lender's offer to purchase the claim for $50,000.00 or later $60,000.00. And he's under no obligation to do that. And again, I apologize to Dr. Rabkin if he was offended by the proposal. But he did testify at the deposition that he had made a business decision to acquire the claim for $5,000.00.

THE COURT: I just don't think you can -- I mean, you've got somebody in a deposition, the lawyer offers him a check unannounced; that's just not the way business is done. And I frankly don't think that's the way depositions should be conducted. So it doesn't surprise me that Dr. Rabkin would be offended by that, because I certainly would be. And if I was opposing counsel, I would have been offended by that. I just don't think that's a fair -- I

just don't think the manner in which that was presented gives rise to much of anything in terms of my decision. But go ahead.

MR. OWENS: Just to point out -- and again, Your [68]Honor, I do apologize personally if he was offended.

THE COURT: I understand.

MR. OWENS: But I will say that in the *Figter* 9th Circuit case, and that was outside of a deposition setting, that --

THE COURT: I mean, you can buy and sell claims; there's no problem with that.

MR. OWENS: Right.

THE COURT: I just think that that's a highly inappropriate setting to try and do it.

MR. OWENS: Fair enough, Your Honor. But if I can respond and just say that --

THE COURT: Go ahead.

MR. OWENS: -- when we did -- when he did say that it was a business investment and that he'd be happy with $30,000.00 -- satisfied with $30,000.00 and when the bank offers to pay him up to twice as much without any risk, without incurring any more expenses, I'm not saying that's dispositive of any issue. All I'm saying is that was one fact

to indicate that this may not have been a real investment, that it may have been a favor to a friend. That's the point.

THE COURT: Are favors to friends prohibited?

MR. OWENS: No, they're not, Your Honor, unless you're acting in a way -- and we can get to the bad faith later. Favors to a friend are not prohibited. But I think [69]that then the Court has to examine whether that transaction is an arm's-length transaction that was done in bad faith.

THE COURT: Okay.

MR. OWENS: And I haven't reached that issue yet, but that --

THE COURT: Okay. Go ahead.

MR. OWENS: Okay.

THE COURT: You have to finish up in about 12 minutes because I have a noon meeting I have to attend.

MR. OWENS: I'll be done in five, Your Honor. Thank you. We cited to the *Flynn Hill* decision where the court designated the claim of an assignee, Terrant, whose principal was a friend and business partner of the debtor, his general partner. Assuming that the plan was confirmed, the best possibly return to Terrant was expected to be about five percent on its claim. On cross-examination, Terrant's principal testified that he was not

interested in being paid by the other plan proponent the face amount of the claim with 15 percent interest or that he wouldn't accept more than twice the amount of the claim. And the bankruptcy court found that Terrant's purchase of the debtor's obligations was not a reasonable -- carefully reasoned business decision but instead an accommodation to a friend or a business partner. We cite this in the reply brief, this decision. And this is exactly what's going on here in this case, Your Honor.

THE COURT: Well, that's -- you're in the land of legalized gambling here. It's not, you know, it's like putting $50 into the slot machine for Megabucks. Maybe you'll win $50,000 or five million dollars. Maybe you'll lose it. I mean but the concept of gambling is not unknown here.

* * *

[77](Recess)

THE CLERK: All rise.

THE COURT: Good afternoon, please be seated. This is going to be my decision in the case of the Village at Lakeridge. I'd like to thank counsel. They all did a good job. Your briefs were helpful and good. This I think is kind of a difficult case and I think you all did a fine job in presenting your clients.

With respect to Dr. Rabkin being treated as an insider, I do not find that Dr. Rabkin is a non-statutory insider because of his relationship with Ms. Bartlett. The cases

that have found non-statutory insiders have involved generally cohabitation, longer periods of association, associations in which the property that the parties become economically entwined, they share checking accounts or sign on each other's checking accounts. They use each other credit cards. They share each other's property. There was not any of that sort of activity in this case. So I'm not finding that would support it.

I don't think that there was any control by either [78] Dr. Rabkin or Ms. Bartlett. Ms. Bartlett is one of only five people who, I'm sorry, one of five people who are on the management committee of the insider and from what I could tell, Dr. Rabkin didn't have any influence on them. So I don't find that he controls the insider either.

I also don't find that Dr. Rabkin's claim was bad faith. I reject the concept that someone acquiring a claim to vote in favor of a plan absent something improper about voting in favor of the plan constitutes bad faith. I think in the right circumstances, someone could certainly acquire a claim and want to vote in favor of the plan. I think -- I don't think that would be bad faith.

Certainly, there was not much due diligence done by Dr. Rabkin in this case. But his purchase was -- the cost of buying the claim was relatively small. It wasn't significant in the overall scheme of Dr. Rabkin's finances or his various investment properties. It had the potential for a big payoff. And I don't think that the people speculating on the possibility of getting paid on claims is a bad motive. And I think that's all he had here.

I think the fact that he rejected the effort to buy his claim during the course of his deposition is really not surprising given the circumstances. Someone presented him with a check that was written out in his name during the course of his being examined under oath and after some considerable [79]period of examination, as I indicated, I think that was not a good plan on the part of whoever came up with it. I understand the doctor or many people would have been put off by that kind of approach and I don't think it's at all surprising that he would reject it and not really be interested in dealing with the people who made the offer to him thereafter.

So I don't find that there's any bad faith on the part of Dr. Rabkin. And I don't find that he's a non-statutory insider because of his relationship with Ms. Bartlett.

* * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 13-60038

IN RE: THE VILLAGE AT LAKERIDGE, LLC,
FKA MAGNOLIA VILLAGE, LLC,

Debtor,

U.S. BANK N.A., TRUSTEE, ET AL., BY
AND THROUGH CWCAPITAL ASSET
MANAGEMENT LLC, SOLELY IN ITS
CAPACITY AS SPECIAL SERVICER,

Appellant,

v.

THE VILLAGE AT LAKERIDGE, LLC,

Appellee,

ROBERT ALAN RABKIN,

Real Party in Interest.

No. 13-60039

IN RE: THE VILLAGE AT LAKERIDGE, LLC,
FKA MAGNOLIA VILLAGE, LLC,

Debtor,

U.S. BANK N.A., TRUSTEE, ET AL., BY
AND THROUGH CWCAPITAL ASSET
MANAGEMENT LLC, SOLELY IN ITS
CAPACITY AS SPECIAL SERVICER,

Appellant,

v.

THE VILLAGE AT LAKERIDGE, LLC,

Appellee,

ROBERT ALAN RABKIN,

Real Party in Interest.

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel.
BAP No. 12-1456, BAP No. 12-1474.
Kirscher, Pappas, and Taylor,
Bankruptcy Judges, Presiding.

Argued and Submitted, October 22, 2015
San Francisco, California

MEMORANDUM*

Before: CLIFTON and N.R. SMITH, Circuit Judges, and LASNIK,** District Judge.

The bankruptcy court did not err in declining to designate Rabkin's claim as being assigned and voted in bad faith pursuant to 11 U.S.C. § 1126(e). We affirm.

We review for clear error the bankruptcy court's finding that a party acted in good faith. *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter Ltd.)*, 118 F.3d 635, 638 (9th Cir. 1997). In reviewing a decision for clear error, we

> may *not* look to what we would have done had we been in the trial court's place in the first instance, because that review would be de novo and without deference. Rather, the scope of our review limits us to determining whether the trial court reached a decision that falls within any of the permissible choices the court could have made.

United States v. Hinkson, 585 F.3d 1247, 1261 (9th Cir. 2009) (citing *United States v. Yellow Cab Co.*, 338 U.S. 338, 70 S. Ct. 177, 94 L. Ed. 150 (1949)).

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Robert S. Lasnik, District Judge for the U.S. District Court for the Western District of Washington, sitting by designation.

Under § 1126(e), "the court may designate any entity whose acceptance or rejection of [a reorganization] plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title." Acceptance or rejection is made in bad faith if a creditor is "not attempting to protect [his] own proper interests, but [is], instead, attempting to obtain some benefit to which [he is] not entitled," such as an "untoward advantage over other creditors for some ulterior motive." *In re Figter Ltd.*, 118 F.3d at 638-39. Ulterior motives include "malice, 'strikes' and blackmail," or attempts to "destroy an enterprise in order to advance the interests of a competing business." *Id.* at 639 (citation omitted). A creditor who attempts "to preserve what he reasonably perceives as his fair share of the debtor's estate" does not act in bad faith. *Id.* (citation omitted). However, a debtor's attempt to sell claims against itself to "an insider or affiliate for the purpose of blocking a plan, or fostering one [has been] seen as a badge of bad faith." *Id.*

The bankruptcy court considered all relevant facts and concluded Rabkin did not vote for Lakeridge's reorganization plan in bad faith. The court acknowledged that Rabkin had not conducted much due diligence, but noted that the claim's purchase price was "relatively small" and "had the potential for a big payoff." The court determined that Rabkin had engaged in speculative investing with no bad motive. The court also acknowledged that Rabkin had refused to accept U.S. Bank's offer to buy his claim for more than he could recover under the proposed reorganization plan, but noted that Rabkin's refusal was "really not surprising given the circumstances." The court cited U.S. Bank's heavy-handed tactics during Rabkin's deposition as one reason Rabkin simply may not have

"be[en] interested in dealing with the people who made the offer." Finally, the court noted that Bartlett had not asked Rabkin to vote in favor of Lakeridge's reorganization plan.

Although we may not have reached the same result as the bankruptcy court had we been sitting in its place, we cannot say the court's decision was clearly erroneous. U.S. Bank has not proven that Rabkin had ulterior motives for voting in favor of the confirmation plan. Nor has U.S. Bank proven that Rabkin was an insider, such that Lakeridge acted in bad faith by assigning Rabkin the claim. Therefore, the BAP's holding, affirming the bankruptcy court's decision on bad faith, is **AFFIRMED**.

SUPREME COURT OF THE UNITED STATES

No. 15-1509

U.S. BANK NATIONAL ASSOCIATION, TRUSTEE, *et al.*,

v.

THE VILLAGE AT LAKERIDGE, LLC, *et al.*

Filed: March 27, 2017

ORDER

The petition for a writ of certiorari is granted limited to Question 2 presented by the petition.